

MONTANA LEGISLATIVE HISTORY

Chapter 342 1999

Bill H _____ S 27

Original bill & history ☒ c

H. Committee on Bus Labor

Hearing Date(s) _____ c

3/5 ☒ c

_____ c

_____ c

Date Out 3/8 ☒ c

Appnp

3-19 ✓

3-23 ✓

S. Committee on Bus Industry

Hearing Date(s) _____ c

1/15 ☒ c

_____ c

_____ c

out 1/27 ✓

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

SENATE BILLS AND RESOLUTIONS

37

3/23	Committee Report--Bill Concurred		
3/27	2nd Reading Concurred	89	8
3/29	3rd Reading Concurred	95	5
	Returned to Senate with Amendments		
4/06	2nd Reading House Amendments Concurred	50	0
4/07	3rd Reading Passed as Amended by House	49	0
4/07	Sent to Enrolling		
4/08	Returned from Enrolling		
4/10	Signed by President		
4/12	Signed by Speaker		
4/12	Transmitted to Governor		
4/19	Signed by Governor		
4/20	Chapter Number Assigned		
	Chapter Number 342		
	Effective Date: 4/19/1999 - Sections 2(3), 16 and 17		
	Effective Date: 10/01/1999 - Sections 1, 2(1), 2(2) and 3-15		

SB 28 Introduced by Depratu

LC0159 Drafter: Martin

Provide for Automatic Extensions of Time for Filing a Montana Individual Income Tax Return;...

By Request of Department of Revenue

12/07	Introduced		
12/22	Referred to Taxation		
1/04	1st Reading		
1/06	Hearing		
1/06	Committee Executive Action--Bill Passed	9	0
1/07	Committee Report--Bill Passed		
1/08	2nd Reading Passed	46	0
1/09	3rd Reading Passed	48	0
	Transmitted to House		
1/11	Referred to Taxation		
1/21	Hearing		
1/25	Committee Executive Action--Bill Concurred	20	0
1/26	Committee Report--Bill Concurred		
2/06	2nd Reading Concurred	99	0
2/08	3rd Reading Concurred	98	0
	Returned to Senate		
2/08	Sent to Enrolling		
2/09	Returned from Enrolling		
2/10	Signed by President		
2/10	Signed by Speaker		
2/12	Transmitted to Governor		
2/18	Signed by Governor		
2/20	Chapter Number Assigned		
	Chapter Number 26		
	Effective Date: 2/18/1999 - All Sections		

SB 29 Introduced by Hertel

LC0180 Drafter: K. Williams

Remove Obsolete Statutory Directives and Procedures Related to Canal Projects Owned by the Department of Natural Resources and Conservation;...

HISTORY AND FINAL STATUS 1999

1/08	Committee Executive Action--Bill Passed as Amended	7	0
1/08	Fiscal Note Received		
1/09	Committee Report--Bill Passed		
1/11	Fiscal Note Signed		
1/11	Fiscal Note Printed		
1/11	2nd Reading Passed	50	0
1/12	3rd Reading Passed	50	0
	Transmitted to House		
1/13	Referred to Business and Labor		
1/22	Hearing		
1/22	Committee Executive Action--Bill Concurred	18	0
1/23	Committee Report--Bill Concurred		
2/03	2nd Reading Concurred	98	1
2/04	3rd Reading Concurred	96	2
	Returned to Senate		
2/04	Sent to Enrolling		
2/05	Returned from Enrolling		
2/06	Signed by President		
2/09	Signed by Speaker		
2/09	Transmitted to Governor		
2/11	Signed by Governor		
2/12	Chapter Number Assigned		
	Chapter Number 7		
	Effective Date: 2/11/1999 - All Sections		

SB 27 Introduced by Hertel, et al.

LC0001 Drafter: B. Campbell

Establish the Montana Telemarketing Registration and Fraud Prevention Act;...

12/07	Introduced		
12/22	Referred to Judiciary		
1/04	1st Reading		
1/04	Rereferred to Business and Industry		
1/04	Fiscal Note Requested		
1/06	Fiscal Note Received		
1/06	Fiscal Note Signed		
1/11	Fiscal Note Printed		
1/14	Sponsor Fiscal Note Requested		
1/14	Sponsor Fiscal Note Received		
1/14	Sponsor Fiscal Note Signed		
1/15	Sponsor Fiscal Note Printed		
1/15	Hearing		
1/28	Committee Executive Action--Bill Passed as Amended	7	0
1/29	Committee Report--Bill Passed as Amended		
2/01	2nd Reading Passed as Amended	49	0
2/02	3rd Reading Passed	50	0
	Transmitted to House		
2/16	Referred to Business and Labor		
3/05	Hearing		
3/08	Committee Executive Action--Bill Concurred as Amended	15	2
3/09	Committee Report--Bill Concurred as Amended		
3/12	2nd Reading Concurred	90	7
3/12	Rereferred to Appropriations		
3/19	Hearing		
3/23	Committee Executive Action--Bill Concurred	15	3

SENATE BILL NO. 27
INTRODUCED BY HERTEL J

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA TELEMARKETING REGISTRATION AND FRAUD PREVENTION ACT; REQUIRING TELEMARKETERS TO REGISTER WITH THE STATE, POST A BOND, AND PROVIDE CERTAIN INFORMATION TO CONSUMERS; ESTABLISHING A TELEMARKETING FRAUD CONSUMER AWARENESS PROGRAM; PROVIDING CIVIL AND CRIMINAL PENALTIES FOR TELEMARKETING FRAUD; INCREASING THE CIVIL FINES FOR UNLAWFUL, UNFAIR, OR DECEPTIVE ACTS OR PRACTICES; AMENDING SECTION 30-14-142, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 13] may be cited as the "Montana Telemarketing Registration and Fraud Prevention Act".

NEW SECTION. Section 2. Purpose -- scope -- rulemaking. (1) The purposes of [sections 1 through 13] are to require telemarketers to register in this state, to establish standards of conduct for telemarketers, and to provide penalties for violations of [sections 1 through 13].

(2) [Sections 1 through 13] do not apply to any claim brought by a person under Title 30, chapter 14, part 5, and the provisions of Title 30, chapter 14, part 5, do not apply to any claim brought by a person pursuant to the provisions of [sections 1 through 13].

(3) (a) The department shall adopt rules to implement the provisions of [sections 1 through 13]. The rules must include but are not limited to rules:

(i) establishing forms and procedures for registration, registration renewal, and bonding of sellers or telemarketers;

(ii) for administering a telemarketing fraud consumer awareness program; and

(iii) ensuring that proper procedures are in place for maintaining civil and criminal actions for violations of [sections 1 through 13].

(b) The office of the attorney general shall adopt rules to implement the provisions of [sections

1 through 13]. The rules must include but are not limited to rules:

(i) for administering a telemarketing fraud consumer awareness program; and

(ii) ensuring that proper procedures are in place for maintaining civil and criminal actions
violations of [sections 1 through 13].

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 13], the following
definitions apply:

(1) "Consumer" means a person who is or may be required to pay for goods or services offered
by a seller or telemarketer through telemarketing.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Goods or services" means any real property, any tangible or intangible personal property,
services of any kind provided or offered to a person.

(4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding
goods or services. The term includes currency values and comparative expressions of value, including but
not limited to percentages or multiples.

(5) "Person" means a natural person, corporation, trust, partnership, incorporated
unincorporated association, or other legal entity.

(6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person
by chance.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written
representation, express or implied, that a person has won, has been selected to receive, or is eligible to
receive a prize or purported prize.

(8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers
to provide, or arranges for others to provide goods or services to the consumer in exchange for
consideration.

(9) "Solicitation" means a written or oral notification or advertisement that:

(a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video,
cinematic, telephonic, or electronic means to a consumer; and

(b) in the case of a notification or advertisement other than by telephone, either of the following
conditions is met:

(i) the notification or advertisement is followed by a telephone call from a seller or telemarketer;

(ii) the notification or advertisement induces a response by telephone and, through that response, a seller or telemarketer attempts to make a sale of goods or services.

(10) "Supervised financial organization" means any commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the organization is subject to supervision by an agency of this or any other state of the United States.

(11) "Telemarketer" means a person, located within or outside of this state, who in connection with telemarketing initiates or receives telephone calls to or from a consumer in this state. The term includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in telemarketing at the direction of a seller.

(12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to induce the purchase of goods or services and that involves more than one telephone call to a consumer.

NEW SECTION. Section 4. Registration of sellers or telemarketers -- felony violations. (1) (a) Unless exempt under [section 5], a person may not act as a seller or telemarketer without first having registered with the department.

(b) The initial application for registration must be approved by the department prior to a seller or telemarketer offering or offering for sale consumer goods or services through any medium.

(c) A registered seller or telemarketer shall submit an application for renewal of registration annually to the department.

(d) The application for a certificate of registration or renewal must include but is not limited to the following information:

(i) the true name, current address, telephone number, and location of the seller or telemarketer, including each name under which the seller or telemarketer intends to engage in telemarketing;

(ii) each occupation or business that the seller's or telemarketer's principal owner has engaged in for the 2 years immediately preceding the date of the application;

(iii) whether any principal or manager has been convicted or pleaded guilty to or is being prosecuted by indictment for racketeering, violations of state or federal securities laws, or a theft offense;

1 (iv) whether there has been entered against any principal or manager an injunction, a temporary
2 restraining order, or a final judgment in any civil or administrative action involving fraud, the
3 racketeering, embezzlement, fraudulent conversion, misappropriation of property, or violation of
4 federal or state consumer protection law. The information must include any pending litigation against
5 applicant.

6 (v) whether the seller, at any time during the previous 7 years, has filed for bankruptcy, been
7 adjudged bankrupt, or been reorganized because of insolvency;

8 (vi) the true name, current home address, date of birth, social security number, and all other
9 names of the following:

10 (A) each telemarketer or other person to be employed by the seller;

11 (B) each person participating in or responsible for the management of the seller's business; and

12 (C) each person, office manager, or supervisor principally responsible for the management of the
13 seller's business;

14 (vii) the name, address, and account number of every institution where banking or any other
15 monetary transactions are conducted by the seller; and

16 (viii) a copy of all scripts, outlines, or presentation material that the seller will require
17 telemarketer to use when soliciting, as well as all sales information to be provided by the seller to
18 purchaser in connection with any solicitation.

19 (2) (a) The application for registration or renewal must be accompanied by a surety bond in the
20 amount of \$50,000. The bond must provide for the indemnification of any person suffering a loss as the
21 result of violation of [sections 1 through 13].

22 (b) The surety may for any cause cancel the bond upon giving a 60-day written notice by certified
23 mail to the applicant and to the department. Unless the bond is replaced by that of another surety before
24 the expiration of the 60-day notice of cancellation, the registration of the seller or telemarketer must be
25 treated as lapsed.

26 (c) The surety bond must remain in effect for 3 years from the period the telemarketing business
27 ceases to operate in this state.

28 (d) (i) Any business required under [sections 1 through 13] to file a bond with a registration
29 application may file, in lieu of the bond, a certificate of deposit, cash, or a government bond in the
30 amount of \$50,000.

(ii) The department shall hold the cash, certificate of deposit, or government bond for 3 years from the period the telemarketing business ceases to operate in this state or registration lapses in order to pay claims made against the telemarketing business for its activities during its period of operation in this state.

(iii) For the purposes of this section, "government bond" means any United States bond, treasury note, or other public debt obligation of the United States that is unconditionally guaranteed as to both interest and principal by the United States.

(e) The registration of a telemarketing business must be treated as lapsed if at any time the amount of the bond, cash, certificate of deposit, or government bond falls below the amount required by this section.

(f) The aggregate liability of the surety company to all persons injured by a seller's or telemarketer's violations may not exceed the amount of the bond.

(3) The following constitute a violation of [sections 1 through 13]:

- (a) failure to register, maintain, or renew a registration if required;
- (b) failure to meet the surety bond requirement if required to provide a bond;
- (c) including any false or misleading information on a registration application; and
- (d) misrepresenting that a seller or telemarketer is registered.

(4) A violation of [section 8, 10, 11, or 12] or subsection (3) of this section also constitutes a violation of 30-14-103 and is subject to the penalty provisions of the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

NEW SECTION. Section 5. Exemptions from registration and bonding. The registration and bonding requirements of [section 4] do not apply to:

(1) any securities, commodities, or investment brokers, dealers, or investment advisers or any associates of securities, commodities, or investment brokers, dealers, or investment advisers who are subject to licensure or registration by the securities and exchange commission, the national association of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an agency of this state or any other state and who are soliciting within the scope of their license or registration;

(2) a person engaged in solicitation for a religious, charitable, political, educational, or other noncommercial purpose or a person soliciting for a domestic or foreign nonprofit corporation that is

- 1 registered with the Montana secretary of state;
- 2 (3) a business-to-business sale;
- 3 (4) a person that solicits sales by periodically publishing and delivering a catalog of the person's
- 4 merchandise to prospective purchasers, if the catalog:
- 5 (a) contains a written description or illustration of each item offered for sale;
- 6 (b) includes the business or home address of the person soliciting the sale;
- 7 (c) includes at least 20 pages of written material and illustrations;
- 8 (d) is distributed in more than one state; and
- 9 (e) has a circulation by mailing of not less than 150,000;
- 10 (5) a person who solicits contracts for maintenance or repair of goods previously purchased from
- 11 that person or from the person on whose behalf the solicitation is made;
- 12 (6) a person soliciting a transaction regulated by the commodity futures trading commission if the
- 13 person is registered or temporarily licensed with the commodity futures trading commission under the
- 14 Commodity Exchange Act, Title 7, chapter 1, of the United States Code, and the person's registration
- 15 or license is not expired, suspended, or revoked;
- 16 (7) a supervised financial organization or parent, subsidiary, or affiliate of a supervised financial
- 17 organization;
- 18 (8) a person licensed as an insurance producer under Title 33, chapter 17, part 2;
- 19 (9) a person soliciting the sale of services provided by a satellite or cable television system
- 20 authorized by the federal government or this state to provide services in this state;
- 21 (10) a telephone company or its subsidiary or agent or other business regulated by the Montana
- 22 public service commission or a federally licensed cellular telephone or radio telecommunication service
- 23 provider;
- 24 (11) a person soliciting business from consumers that have an existing business relationship with
- 25 or have previously purchased from the business enterprise for which the person is soliciting;
- 26 (12) a person operating a retail business establishment under the same name as that used in the
- 27 solicitation and:
- 28 (a) the products or services are displayed and offered for sale at the business establishment; and
- 29 (b) a majority of the person's business involves the consumer obtaining the products or services
- 30 at the business establishment;

(13) a person soliciting for the sale of a magazine or newspaper of general circulation;

(14) an issuer or a subsidiary of an issuer that is authorized to offer securities for sale in this state;

(15) a book, video, record, or multimedia club, contractual plan, or arrangement:

(a) under which the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise;

(b) that is regulated by the federal trade commission regulation, 16 CFR 425, concerning the use of negative option plans by sellers in commerce; or

(c) that provides for the sale of books, videos, records, multimedia products, or other goods that are not covered by subsection (15)(a) or (15)(b), including continuity plans, subscription arrangements, standing order arrangements, single sales, supplements, or series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;

(16) a real estate salesperson or broker licensed by this state;

(17) a person that has provided telemarketing sales services under the same name and derives 50% of gross telemarketing sales revenue from contracts with persons exempted under this section from registration requirements;

(18) a person soliciting the sale of food or food products if the solicitation is not intended to and does not result in a sale in excess of \$100 to a single address.

NEW SECTION. Section 6. Telemarketing fraud consumer awareness program. The department shall establish and administer a telemarketing fraud consumer awareness program. The program must be funded as provided in [section 7(2)].

NEW SECTION. Section 7. Authority of department, attorney general, and county attorney. (1) The department, the attorney general, and a county attorney have the same authority in enforcing and carrying out the provisions of [sections 1 through 13] as they have under Title 30, chapter 14, part 1.

(2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must be deposited into the state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this section and to fund the telemarketing fraud consumer awareness program

1 established in [section 5]. Any excess civil fines, costs, or fees must be deposited in the general

2 (3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to
3 section must be deposited into the state special revenue account to the credit of the attorney general.
4 must be used to defray the expenses of the office of the attorney general in discharging its duties
5 relation to this section and to establish a telemarketing fraud consumer awareness program similar to
6 program authorized in [section 5]. Any excess civil fines, costs, or fees must be deposited in the general
7 fund.

8 (4) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the
9 general fund of the county where the action was commenced.

10
11 NEW SECTION. Section 8. Recordkeeping requirements. (1) (a) A telemarketer shall keep records
12 subject to this section for a period of 24 months from the date the record is produced.

13 (b) The records that must be kept for the 24-month period include:

14 (i) all substantially different advertising, brochures, telemarketing scripts, and promotional
15 materials;

16 (ii) the name and last-known address of each prize recipient and the prize awarded;

17 (iii) the name and last-known address of each consumer, the goods or services purchased, the
18 date the goods or services were shipped or provided, the amount of goods or services provided, and the
19 amount paid by the consumer for the goods or services;

20 (iv) the name, any fictitious name used, the last-known home address and telephone number, and
21 the job title for all current and former employees directly involved in telephone sales; however, if the seller
22 or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable
23 to only one specific employee; and

24 (v) all written authorizations required to be provided or received under [sections 1 through 13].

25 (2) In the event of any dissolution or termination of a telemarketer's business, the principal of that
26 telemarketer shall maintain all records as required under this section. In the event of any sale, assignment,
27 or other change in ownership of the seller's business, the successor shall maintain all records required
28 under this section.

29
30 NEW SECTION. Section 9. Acts and practices not governed by [sections 1 through 13]. The

Following acts and practices are not subject to the provisions of [sections 1 through 13]:

- (1) telephone calls in which the sale of goods or services is not completed and payment or authorization of payment is not required until after a face-to-face sales presentation by the seller or telemarketer; and
- (2) telephone calls initiated by a consumer that are not the result of any solicitation by a seller or telemarketer.

NEW SECTION. Section 10. Disclosure and contract requirements. (1) When contacting a consumer, a seller or telemarketer shall promptly disclose in a clear and conspicuous manner the following:

- (a) the identity of the seller or telemarketer;
- (b) that the purpose of the call is to sell goods or services;
- (c) the nature of the goods or services; and
- (d) that a purchase or payment is not necessary to be able to win a prize or participate in a prize promotion.

(2) Prior to requesting any payment from the consumer a seller or telemarketer shall disclose in a clear and conspicuous manner the following information:

- (a) the total cost of the goods or services;
- (b) all material restrictions, limitations, and conditions pertaining to the purchase of the goods or services;
- (c) in any prize promotion:
 - (i) the odds of being able to receive the prize or, if the odds are not calculable in advance, the factors used in calculating the odds; and
 - (ii) the "no-purchase no-payment" method of participating in the prize promotion with either instructions on how to participate or an address or a local or toll-free telephone number that consumers may write or call for information on how to participate.

(3) A seller or telemarketer may not misrepresent, directly or by implication, any of the following information:

- (a) any material aspect of performance, effectiveness, nature, or basic characteristics of goods or services;

(b) any material aspect of the nature or terms of the seller's or telemarketer's refund, cancellation, exchange, or repurchase policies; or

(c) any material aspect of a prize promotion, including but not limited to the nature or value of the prize or that a purchase or payment is required to win a prize or to participate in a prize promotion.

(4) (a) Except as provided in subsection (6), in addition to any other right to revoke an offer, in the case of a sale made by telephone, the buyer may cancel the sale at any time prior to signing an agreement or offer to purchase the goods or services.

(b) Cancellation occurs:

(i) when written notice of cancellation is given to the seller or telemarketer; or

(ii) when written notice of cancellation, properly addressed and with postage prepaid, is deposited in the mail.

(c) A notice of cancellation does not have to be in the form prescribed by the seller or telemarketer if it indicates the intention of the buyer to cancel the sale of goods or services.

(d) In the case of goods, a telemarketing sale may not be canceled if the goods cannot be returned to the seller or telemarketer in substantially the same condition as when received by the buyer.

(5) (a) Except as provided in subsection (6), a telemarketing sale may not be considered final until the purchaser receives the notice required by subsection (5)(b).

(b) A seller or telemarketer shall furnish the purchaser, in the same language as that principally used in the sales presentation, a written notice, in not less than 10-point boldface type, containing a statement in substantially the following form:

"You, the purchaser, may cancel this transaction without any penalty or obligation at any time prior to midnight of the third business day after receipt of this notice. If you cancel, any payments made by you under the sale will be returned within 10 business days of the day your written notice of cancellation is received by the seller and any security interest connected to this transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this sales contract; or you may, if you wish, comply with the seller's instructions regarding returning the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick up the goods within 20 days of the date of your notice of cancellation or if the seller does not agree to assume the expense

and risk of the return of the goods to the seller, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to return the goods, then you remain liable for the performance of all your obligations under the sales contract.

To cancel this transaction, mail, deliver, or telegram a written notice of cancellation to (name of seller) at the following address (address of the seller)."

(c) In addition to the notice required in subsection (5)(b), the seller or telemarketer shall furnish the purchaser with:

- (i) the seller's or telemarketer's name and the name of the person to whom a notice of cancellation is to be given if different from the seller's or telemarketer's name;
- (ii) the legal name of the company for whom the seller or telemarketer is soliciting;
- (iii) the seller's or telemarketer's street address and telephone number; and
- (iv) the date and a description of the telephone solicitation.

(6) A sale is not subject to the requirements of subsections (4) and (5) if the seller or telemarketer, at a minimum, has a policy of:

(a) accepting returns or canceling services in connection with the return of unused and undamaged goods or canceled services for a period of not less than 7 days after the date of delivery to the consumer and providing a cash refund for a cash purchase or issuing a credit for a credit purchase applied to the account that was debited;

(b) disclosing the seller's or telemarketer's refund and return policy to the consumer by telephone or in written material included with advertising or promotional material or with the delivery of the goods or services; and

(c) restoring payments or issuing credits pursuant to subsection (6)(a) within 30 days after the date on which the seller or telemarketer receives the returned goods or notice of cancellation of services. A seller or telemarketer who discloses in writing that a sale is subject to "satisfaction guaranteed", "free inspection", "a no-risk guarantee", or similar words or phrases must be considered to have met the review and return for refund policy requirements of this subsection.

(7) It is an unfair and deceptive act or practice to fail to comply with or to misrepresent the requirements of this section.

(8) In addition to subsection (7), it is a violation of [sections 1 through 13] for any seller or

1 telemarketer to engage in any other unfair or deceptive conduct that would create a likelihood
2 of confusion or misunderstanding to any reasonable consumer.

3 (9) Failure to comply with the provisions of this section is a violation of 30-14-103.
4

5 **NEW SECTION.** Section 11. Prohibited acts and practices. (1) It is a violation of [sections
6 through 13] for a seller or telemarketer to engage in the following conduct:

7 (a) advertise or represent that registration as a seller or telemarketer equals an endorsement
8 or approval by the state or any political subdivision of the state;

9 (b) assist, support, or provide substantial assistance to any telemarketer when the seller
10 or should have known that the telemarketer was engaged in any act or practice violating [sections
11 through 13] of this section;

12 (c) request a fee in advance to remove derogatory information from or improve a person's credit
13 history or credit record;

14 (d) request or receive payment in advance from a person to recover or otherwise aid in the recovery
15 of money or any other item lost by the person in a prior telemarketing transaction; however, this
16 subsection does not apply to services rendered to a person by a licensed attorney;

17 (e) obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a
18 person's checking, savings, bond, or other account without the person's express written authorization
19 or

20 (f) procure the services of any professional delivery, courier, or other pickup service to obtain
21 immediate receipt or possession of a person's payment unless the goods are delivered with the
22 opportunity to inspect them before any payment is collected.

23 (2) Failure to comply with the provisions of subsection (1) constitutes a violation of 30-14-103.
24

25 **NEW SECTION.** Section 12. Abusive acts and practices -- burden of proof. (1) It is an abusive
26 telemarketing act or practice and a violation of [sections 1 through 13] for any seller or telemarketer to
27 engage in the following conduct:

28 (a) use threatening, intimidating, or profane or obscene language;

29 (b) engage any person repeatedly or continuously with behavior a reasonable person would
30 consider annoying, abusive, or harassing;

(c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or telemarketer;

(d) engage in telemarketing to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location; or

(e) engage in any other conduct that would be considered abusive to any reasonable consumer.

(2) The department or the attorney general may seek injunctive or declaratory relief or any other remedy provided in Title 30, chapter 14, part 1, for any violations of this section.

(3) In any criminal proceeding alleging a violation of [sections 1 through 13], the burden of producing evidence to support a defense based on an exemption under [section 5] or an exception from a definition in [section 3] is on the person claiming the exemption or exception.

NEW SECTION. Section 13. Civil remedies -- venue -- burden of proof. (1) The sale of any goods or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or telemarketer pursuant to the provisions of [section 4].

(2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a prohibited act or practice is entitled to recover actual damages or \$500, whichever is greater, attorney fees, court costs, and any other remedies provided by law.

(3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an abusive act or practice is entitled to receive injunctive or declaratory relief.

(4) (a) The department, the attorney general, or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of [sections 1 through 13], may seek any remedy provided by Title 30, chapter 14, part 1.

(b) The proper place for trial for an action based on a claim of a violation of [sections 1 through 13] is the district court of Lewis and Clark County or the county in which the alleged violation occurred.

(5) In a civil proceeding alleging a violation of [sections 1 through 13], the burden of proving an exemption under [section 5] or an exception to a definition contained in [section 3] is on the person claiming the exemption or exception.

Section 14. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) A person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil ~~penalty~~ fine of not more than \$10,000 ~~per~~ for each violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause ~~shall~~ must be continued in ~~such~~ those cases the department acting in the name of the state may petition for recovery of penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil ~~penalty~~ fine of not more than ~~\$500~~ per \$1,000 for each violation.

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall, upon conviction be fined not more than ~~\$2,000~~ \$5,000, imprisoned for not more than 1 year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that ~~his~~ the conduct was a violation of 30-14-103."

NEW SECTION. Section 15. Codification instruction. [Sections 1 through 13] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply [sections 1 through 13].

NEW SECTION. Section 16. Effective dates. (1) [Sections 2(3) and 15 and this section] are effective on passage and approval.

(2) [Sections 1, 2(1) and (2), and 3 through 14] are effective October 1, 1999.

- END -

FISCAL NOTE

Bill #: SB0027

Title: Regulate telemarketing fraud

Primary

Sponsor: John Hertel

Status: As introduced

Sponsor signature	Date	Dave Lewis, Budget Director	Date
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Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:		
General Fund	\$177,519	\$155,519
State Special Revenue	0	\$ 25,000
Revenue:		
State Special Revenue		\$ 25,000
Net Impact on General Fund Balance:	(\$177,519)	(\$155,519)

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget	X		Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

Department of Commerce (DOC):

1. The proposed legislation mandates that the DOC register telemarketers. It is estimated that 100 telemarketers will register and post bond.

(continued)

2. Approximately 200 complaints will be received annually from consumers which will result in an investigation and litigation against the telemarketers. The 200 complaints will result in \$50,000 in fines being levied and \$25,000 actually being collected in FY 2001.
3. Implementation of the proposed legislation will require 4.00 FTE as follows: One FTE grade 17 attorney (\$40,228), 1.00 FTE grade 14 investigator (\$31,691), and 2.00 FTE grade 12 compliance specialists (\$27,300). Estimated total personal services costs are \$126,519 each year.
4. Estimated operating expenses of \$40,000 in FY 2000 and \$54,000 in FY 2001 include other services, supplies, materials, communications, travel, rent and other expenses. Additionally, four new employee office packages (\$1,000 each) and computers (\$1,750 each) are included for FY 2000 only.

Department of Justice (DOJ):

5. Under section 2(b), the DOJ will work with the DOC to adopt a single set of rules establishing forms and procedures for registration, registration renewal, and bonding of sellers or telemarketers and to administer a telemarketing fraud consumer awareness program.
6. Under section 7, the Attorney General will take legal action against fraudulent telemarketers only when requested by the DOC or by a county attorney. Most actions will be civil actions initiated by the DOC. Fewer than a dozen criminal actions will be brought each year, most by county attorneys.
7. Any cases referred to the Attorney General for criminal prosecution will be handled by existing staff of the Prosecution Services Bureau of the Legal Services Division.
8. DOC will develop and implement the consumer fraud awareness program called for in the legislation.
9. Most legal actions will be brought by the DOC or by county attorneys and the Attorney General will handle only criminal cases. No civil fines, costs, and fees will be recovered by the Attorney General under section 7.
10. The state special revenue fund discussed in Section 7 will be administered by DOC and DOJ will be a subagency.

FISCAL IMPACT:

Department of Justice: None

Department of Commerce:

	FY2000 <u>Difference</u>	FY2001 <u>Difference</u>
FTE	4.00	4.00
<u>Expenditures:</u>		
Personal Services	\$126,519	\$126,519
Operating Expenses	51,000	54,000
TOTAL	<u>\$177,519</u>	<u>\$180,519</u>
<u>Funding:</u>		
General Fund (01)	\$177,519	\$155,519
State Special Revenue (02)	0	\$ 25,000
TOTAL	<u>\$177,519</u>	<u>\$180,519</u>

Revenues:

State Special Revenue (02)	\$ 25,000
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Net Impact to Fund Balance (Revenue minus Expenditure):

General Fund (01)	(\$177,519)	(\$155,519)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Referral of telemarketing fraud cases to county attorneys' offices for civil or criminal prosecution may have a fiscal impact on county governments.

TECHNICAL NOTES:

1. The bill should be amended to eliminate the requirement for both the Departments of Commerce and Justice to adopt rules on identical issues. Administrative rules are inappropriate for establishing criminal procedures, since such procedures are provided by state statute.

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)

The proposed legislation would require telemarketers to register with the Department of Commerce, post a bond, establish standards of conduct for telemarketers, establish a telemarketing consumer awareness program, and provide penalties for violations.

Proceeds received from telemarketers would be deposited into a state special revenue account created by the proposed legislation and expended for the purposes as specified in the bill.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

By placing the proceeds of this proposed legislation into a state special revenue account, consumers, telemarketers, and the Legislature will be assured that the program is enacted and working as intended. Additionally, problems which arise in regard to consumers and telemarketers would be addressed by funds directly collected for and allocated to the Telemarketing Fraud Program.

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? ___Yes __X__No (if no, explain) The DOC does not anticipate receiving enough revenue to fund the program.

- d) Does the need for this state special revenue provision still exist? ___Yes ___No (Explain)

The proposed legislation establishes a state special revenue account which is necessary to provide for the administration and accountability of the Telemarketing Fraud Program.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)

No. The dedicated revenue provision of this proposed legislation does not diminish the Legislature's ability to control expenditures or establish priorities.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)

Yes, provided the Legislature continues to mandate state responsibility for the Telemarketing Fraud Program.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

The dedicated revenue provision, which is required in the proposed legislation, would provide accounting efficiencies within the Department of Commerce. It would allow for the quick and accurate analysis of how effectively and efficiently the Telemarketing Fraud Program is operating.

Fiscal Note Request, SB0027, as introduced

Page 5

(continued)

If this proposal were to be funded through the general fund it would be much more difficult to determine program effectiveness and efficiency.

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 15, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 115, 1/5/1999
SB 129, 1/5/1999
✓ SB 27, 1/12/1999

Executive Action: None

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 115

Sponsor: SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS

of \$700 per month. They may go bare. I'm surprised you haven't heard from some other insurance companies because I believe they believe in this bill as well because it helps them. If they have sold a \$5,000 stop-loss policy and the employer is not renewed, who is going to get the criticism? It will be the company that had the policy. I do not believe SB 129 has any problems with ERISA in any way because it doesn't affect the mandated benefits of what they're providing.

(CHAIRMAN JOHN HERTEL relinquished the chair to VICE CHAIRMAN MIKE SPRAGUE so he could present SB 27).

HEARING ON SB 27

Sponsor: SEN. JOHN HERTEL, SD 47, MOORE

Proponents: Bill Olson, AARP
Peter Blouke, Department of Commerce
Jerome Anderson, unretired member AARP
Joe Mazurek, Attorney General
Mark O'Keefe, State Auditor
Rich Pavlonnis, telemarketer, Great Falls
Bill Fleiner, Sheriff's Association
Verner Bertelsen, Montana Senior Citizens Assn.
Jane Vincent, Helena
Rep. Dick Haines, HD 63, Missoula
Eileen Miller, East Helena
Craig Sweet, Montana Public Interest Research Group
Margit Hatcher, Victim of Scam
Barbara Ranf, U.S. West
Christiana Schwitzer, Montana Trial Lawyers Assoc.
Greg Van Horssen, State Farm Insurance Company
Susan Witte, Blue Cross/Blue Shield
Mark Baker, AT&T
Chris Gallus, Montana Chamber of Commerce
Geoff Feiss, Montana Telecommunications Assn.
Jon Metropoulos, Farmers Insurance
Jeanne Bauman, Montana Credit Unions League
Alvin Funk, Victim of Scam
Betty Babcock, Victim of Scam, Helena
Annie Bartos, Department of Commerce
Ross Cannon, National Direct Marketing Assn.
Riley Johnson, National Federation of Independent
Business

Ralph Andonno, Magazine Telemarketer, Great Falls
Mike Voeller, Lee Newspapers of Montana

Opponents: None.

Opening Statement by Sponsor:

SEN. JOHN HERTEL, SD 47, MOORE. It gives me a great deal of pleasure to sponsor SB 27, the telemarketing fraud bill and a bill that is vitally needed. There are some Committee members who remember the telemarketing fraud bill that went through this Committee in 1997 was unanimously tabled because the bill didn't do what it was intended to do. There was a good aspect to come out of that bill -- a resolution was formed and passed the Legislature. The resolution created an interim committee who studied this issue and came up with some solutions to alleviate the problem, i.e. SB 27. I would like to briefly walk you through the bill: Section 1 talks about the title. Section 2 gives the purpose and rulemaking. Section 3 deals with definitions. Section 4 deals with the registration of telemarketers and the qualifications that must be met before becoming a qualified telemarketer. Also, it requires telemarketers to be bonded with a \$50,000 bond. Section 5 deals with the exemptions. Section 6 describes the Telemarketers Awareness Program and tells how it will be funded. Section 7 explains how the Department of Justice will enforce this program, explains the fining process and how the fees will be used. Section 10 explains the procedure the telemarketers must go through when making a sale to the consumer, what information must be disclosed and the cancellation process for the consumer. Sections 11 & 12 explain other procedures and practices which are prohibited to telemarketers, i.e. requesting fees or receiving payments in advance, using profane or obscene language, etc. Section 13 describes what the person who has been acted upon by an illegal telemarketer can do and explains his civil remedies. Section 14 describes the amount of the penalties against those who have acted illegally as a telemarketer. This penalty will follow what is already established in 30-14-103 & 30-14-111. Section 15 refers to the codification of the bill -- the statute will be placed in Title 13, Chapter 14. Section 16 explains the effective date of this legislation would be October 1, 1999. The bill addresses some major concerns, i.e. the bonding and registration of telemarketers, prohibitions (obtaining direct

access to credit cards and bank accounts, advanced payments, etc.). It also gives the consumer the cancellation procedure, explains the civil fine enforcement procedure that is available for the con artists, and form & exemption list of those telemarketers who do not qualify under this legislation. You will hear testimony from both the Departments of Commerce & Justice, others who worked on this legislation during the interim and those who have been affected by illegal acts.

{Tape : 1; Side : B; Approx. Time Counter : 14.7}

Proponents' Testimony:

Bill Olson, AARP. He read his written testimony **EXHIBIT(5)**.

Peter Blouke, Department of Commerce. I rise in strong support of **SB 27**. The Department of Commerce, through our current Consumer Affairs Bureau, has been very actively involved in working with AARP and other state agencies in crafting this piece of legislation that we believe is very important. I applaud AARP for their effort; however, fraudulent telemarketers do not discriminate and will just as gladly take money from a 20-year-old as from a 70-year-old. Although AARP has been actively involved, there is a need for this bill to cover all of Montana's population. There is a fiscal note attached and it would be a tremendous disservice to the people who have worked long and hard on this bill if the resources are not provided to actually implement the bill. I have to leave but Annie Bartos will be available to answer any questions. I also leave you with a copy of amendments proposed by the Department of Commerce **EXHIBIT(6)**.

Jerome Anderson, unretired member AARP & Cimarron Corporation, Great Falls. We prepared an amendment **EXHIBIT(7)** to add to the practices which are prohibited in Section 11. Mr. Pavlonnis, my client, will testify with regard to the reasoning behind the proposed amendment. We would like the Committee to consider the amendment in order to strengthen the purposes of the bill.

{Tape : 1; Side : B; Approx. Time Counter : 24.7}

Joe Mazurek, Attorney General. We too want to add our support for this bill and thank **SEN. HERTEL** for being willing to carry it. It has been a cooperative effort of AARP, other seniors

groups, Department of Commerce, Department of Justice and State Auditor's Office. Sometimes it is hard to understand that fraudulent telemarketers are hardened criminals whose purpose is to get money from people for no legitimate purpose; that is what **SB 27** is trying to address. Along those lines, we have circulated a couple of proposed amendments that will clarify the criminal provisions in this proposed bill **EXHIBIT(8)**. It is important we have legislation like this; there are a number of cooperative efforts nationally among the states. We need laws like this so we can work across state lines and help one another. This bill will allow us to do that. We urge favorable consideration by the Committee. My budget is up in the House Appropriations Subcommittee and Steve Bullock, Assistant Attorney General, will answer any questions on behalf of our Department.

Mark O'Keefe, State Auditor & Insurance & Securities

Commissioner. I appear to stand in full support of **SB 27**. It's taken a lot of work by a number of people, agencies and industries to put the bill into today's form. As the Insurance & Securities Commissioner, one of the programs we created five years ago is the Montana Senior Fraud Protection Network. You have just been given a card on that Network **EXHIBIT(9)**. In the past two and a half years I have given 85 presentations to senior citizens groups around Montana about insurance and securities fraud, something which is often telemarketing fraud also. We have the authority to regulate and prosecute those individuals who are dealing with securities and insurance. Unfortunately, 90% of the time I would give a presentation, I would have an individual who would have a complaint against a telemarketing company over which we had no authority. We would then refer that and those people to the Department of Commerce or Attorney General's office who did an admirable job of dealing with it under present laws and with the resources they had. Ultimately, those individuals we met out in the field got nowhere with their complaints because the laws weren't there for the enforcement to take place. **SB 27** remedies that. We put together the Senior Fraud Protection Network with AARP and MSCA because 80% of the victims in our office's investigations are seniors; however, the other 20% aren't -- con men will take money from whomever they can. I urge you to pass the bill and to offer my support to the Department of Commerce and the Attorney General's office.

Rich Pavlonnis, telemarketing business, Great Falls. We currently employ approximately 60 people and do annual sales in excess of \$4 million. I'm glad to be here in support of **SB 27** and to add my voice to support the need for strong legislation. We have an amendment **EXHIBIT(7)** which addresses one of the more pressing concerns in telemarketing fraud and essentially want to encourage the passing of the bill. I commend AARP and DMA and others who worked so hard to get it to this point.

Bill Fleiner, MT Sheriffs and Peace Officers Association. We support this legislation on behalf of senior citizens. This is our long standing working relationship we've had with senior citizens through area agencies on aging. We were the first to conduct community and law enforcement training across Montana with regard to elder abuse and neglect. The Montana Sheriffs and Peace Office Officers Association has never been a part of telemarketing. When we campaign for fundraising we send out an annual mailer, and it is done only with each county sheriff's acceptance. We urge your support.

Verner Bertelsen, Montana Senior Citizens Association. We have been very active in fraud prevention programs around Montana, along with the Auditor's Office. We certainly are in strong support of **SB 27** and think it's high time to put an end to the impunity with which telemarketers are ripping off people. We urge your support.

Jane Vincent, Helena. I am a Montana native, as was my elderly mother who was nearly taken for \$6,000. I urge you to pass **SB 27**.

{Tape : 1; Side : B; Approx. Time Counter : 32.6}

REP. DICK HAINES, HD 63, MISSOULA. I'd like to share some of my experiences. My mother passed away a couple of years ago after 66 years of marriage, which left a big hole in my father's life which consequently made him vulnerable to this type of activity. The first thing that got him into trouble was mail which guaranteed \$10,000 if you send a reply, etc. You might ask what mail has to do with telemarketing fraud. Well, when you answer those kinds of letters, your name goes onto the list; an FBI agent later informed me when your name is on the list, those lists are transferred among different groups in the telemarketing

business -- eventually they end up on the "dark side." We became aware of this situation when we noticed the enormous telephone bills for long distance calls made on my father's US West account. (he is a retired telephone employee who gets his calls free -- a typical bill is \$1.49 per month). We were noticing \$200, \$400 and the highest was \$600 per month. I went to US West and was told it was a 900 account and I would have to deal with that firm because all US West does is collect the money and send the billing on. When I called the 900 account, the first thing you get is "all representatives are busy so call a little later". I went through this a number of times and got frustrated with it so started to redial immediately upon receiving the voice message until I finally got a live person. I had to go through three (3) supervisors and a lot of very deep confrontational conversation but finally got some agreement from them to refund some money. What they do is call the victim and say it's a toll free number and if you want to call back, call this 900 number. My father would call them and being deep in grief, he would talk to them for an hour at a time at 90 cents per minute.

The next thing were lottery offers, though by this time I was helping my father with his bills. I noticed he had a Visa charge for \$200 or \$300 and when I tried to find out what it was, I became known on a first-name basis with a number of fraud management firms around the country that handle this for Visa and MasterCard. The biggest one we got was \$5,000. The telemarketers call and tell the person they'll enter their name in the Australian or whatever lottery and they sound like they're legitimate. You give them your credit card number and as soon as you hang up, charges are being issued against it.

Then we got into registered mail which looks very official. However, upon opening it, it's more Australian lottery stuff urging the citizen to send money to be entered in this lottery; as far as I know, there is no such lottery.

Also, I got a call one day from an FBI agent here in Helena who asked me how my father was doing. He suggested I call him immediately and said the UPS man had been there asking for a check for \$125. Later we were in the restaurant when a young man came over to us and identified himself as the UPS driver. He explained what he had done -- apparently as soon as he realized it was a fraud he left my father alone and called the FBI.

We went on to have lots of telephone calls that might tell my father he had won \$2 million or \$3 million; in fact, sometimes he'd call me in the middle of the night so excited he could hardly stand it. I would ask him how much money he would have to send them and he would say \$2,500. I would tell him nobody collects money in order to award a prize. As I understand it from the FBI, these people operate out of a boiler room. They would call my father to offer an opportunity to put this money into an investment which would yield him a lot of money which would make him happy for the rest of his life. Then they'd say they would have Joe Smith from Arkansas call him, when in fact, they'd just hand the phone to the next booth in this boiler room and he would give the same speech, and so it would go.

You have registration and courier pickup in the bill; however, you need to look at something that exempts the telephone company and their agents because of the 900 thing. The best thing you have going in the bill is the Consumer Awareness Program because that's probably the only thing in the long run that will get the citizenry to understand how lethal this is. I would like to see something requiring caller ID and I would also would think you'd want to look at restricting the transfer of lists between businesses, though that might be hard to do at the state level. I will do anything I can to make this bill successful.

{Tape : 1; Side : B; Approx. Time Counter : 40.9}

Eileen Miller, East Helena. She read her written testimony EXHIBIT(10).

{Tape : 2; Side : A; Approx. Time Counter : 0}

Craig Sweet, Montana Public Interest Research Group (MPIRG). We support SB 27 and want to thank AARP, the Department of Commerce and the Department of Justice for working on the bill. I understand this is the third or fourth Legislative Session this bill has been considered and during that time, many lives have been ruined by telemarketing fraud. Everyone in this room is a potential consumer and a potential target for telemarketing and consumer fraud. Please support this bill.

Margit Hatcher, victim of scam. I support HB 27. EXHIBIT(11) is her written testimony.

Barbara Ranf, U.S. West. We have been working with AARP on telemarketing fraud legislation since the 1995 session. Their concerns are addressed in the bill. We support **SB 27**.

{Tape : 2; Side : A; Approx. Time Counter : 6.4}

Christiana Schwitzer, Montana Trial Lawyers Association. We stand in support of the bill.

Greg Van Horssen, State Farm Insurance Company. We support the bill with one minor amendment **EXHIBIT(12)**. It was the intent of the drafters of **SB 27** to exempt legitimate insurance producers from the effect of this bill; however, on occasion an insurance producer will have an employee make the phone call regarding the status of the product. Our amendment would go to Page 6, Line 18, Subsection 8. At the end of the sentence, include "or employees of the producer". We believe this amendment is within the intent of this bill. I have spoken with the sponsor and AARP and their response is positive. I understand Blue Cross/Blue Shield will be bringing some amendments also -- we support them as well. **Miss Jacqueline Lenmark, American Insurance Association (AIA)** asked me to put her support for this bill with the amendments on record.

Susan Witte, Blue Cross/Blue Shield (BC/BS). I am here on behalf of BC/BS which supports **SB 27** with the amendments suggested by State Farm. We also would like to point out we believe it is the intention of the Committee, under the exemptions of the listed parties in Section 5, to include the rest of the provisions of the bill. We would support an amendment to make sure the exemptions of these parties are exempt from the rest of the provisions of the bill. I think that's the intent of the bill, though we're not sure. But we are willing to submit amendments on it. I also would stick "providing exemptions" in the title.

Mark Baker, AT&T. We do rise in support of this legislation today. I have visited with the chairman about a couple of suggested proposed amendments which we have forwarded to the Committee **EXHIBIT(13)** and **EXHIBIT(14)**. The first amendment deals with Section 5, Paragraph 10, where it talks about a telephone company or its subsidiary or agent or other business regulated by the Montana Public Service Commission. We would ask that language be expanded to include the Federal Communications

Commission as well. The second amendment deals with Section 13, Paragraph 2, "attorneys fees and court costs." We're concerned with the language that it may result in protracted litigation or frivolous lawsuits. We would ask that the reference to attorneys fees and court costs be stricken from that section. With those amendments we rise in support of the legislation.

Chris Gallus, Montana Chamber of Commerce. We are here today to support SB 27 with the amendments just proposed by Mr. Baker.

Geoff Feiss, Montana Telecommunications Association. We rise in support of this legislation. The Committee does have a minor technical amendment to Subparagraph 10, Section 5, dealing with exemptions which are intended to include telephone companies but as drafted does not include telephone cooperatives. So we simply include cooperatives under that **EXHIBIT(15)**.

Jon Metropoulos, Farmers Insurance. We rise in support of the bill as well as the suggested amendments by Blue Cross/Blue Shield and State Farm.

Jeanne Bauman, Montana Credit Unions League. We support this bill with one (1) minor amendment -- Page 3, Line 8. Add "the United States or of" to be inserted after "agency of." This amendment is needed to included federally chartered financial institutions in this definition **EXHIBIT(16)**.

{Tape : 2; Side : A; Approx. Time Counter : 12}

Alvin Funk, Himself. **EXHIBIT(17)** and **EXHIBIT(18)** is his written testimony. I urge the Committee to pass this legislation.

Betty Babcock, Former Legislator and a Victim. **EXHIBIT(19)** and **EXHIBIT(20)** is her written testimony.

Annie Bartos, Department of Commerce. Earlier this morning you heard Peter Blouke testify in support of SB 27. The amendments **EXHIBIT(6)** which were passed out at the beginning of the hearing, pertain to Page 7, Line 1, which lists the exemptions. The Department proposes the exemption that pertains to the sale of magazines and newspaper circulation be omitted to allow this act to cover this type of solicitors.

January 15, 1999

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{Tape : 2; Side : A; Approx. Time Counter : 21.5}

Ross Cannon, National Direct Marketing Association. I'm one of the members of the Task Force that worked with AARP, the Department of Commerce, Department of Justice and Bart to see if we could craft a bill that everyone could live with. I appear as a proponent with a couple of amendments **EXHIBIT(21)**, which I will explain.

Riley Johnson, National Federation of Independent Business (NFIB). We stand in support of SB 27, asking you to give very serious consideration to Mr. Cannon's amendment, Section 11, Line E because NFIB is a major telemarketer with memberships all over the country. We do accept credit cards and check drafts on accounts (have done it for years). Since that amendment tracks federal rules we are now presently following, we would ask that it be included. We feel the voice backup that can be produced with that is sufficient and equal to the written.

Ralph Andonno, Magazine Telemarketer, Great Falls. I would like to support the bill as initially drafted and Mr. Cannon's amendment also. One of the things Montana legitimate telemarketers support is the elimination of fraud and we think **SB 27** goes a long way to do that. However, one of the considerations we have with the amendment offered by the Department of Commerce which no longer provides for the exemption of periodicals and magazine sales, is it doesn't consider the effect it will have on the approximate 400 magazine telemarketers in Montana. This law calls for the posting of a surety bond of \$50,000. My insurance agent tells me because of the provision that requires the bond to be in effect for a period of three (3) years after you go out of the business, he didn't know of any surety company who would write that bond and place it in effect - they said it would not be possible. The provision then says if you cannot provide a surety bond, you must provide \$50,000 in cash or a certificate of deposit with the state of Montana and leave it on deposit the whole time you do business in Montana and three (3) years thereafter. Most of us who engage in magazine telemarketing in Montana are citizens of Montana who have been here most of our lives -- we're not the big national conglomerates who can post a \$50,000 bond. For most of us to post the \$50,000 bond and leave it for three (3) years thereafter is tantamount to putting us out of business. I have talked with

SENATE COMMITTEE ON BUSINESS AND INDUSTRY

January 15, 1999

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most of the telemarketers and they say this exemption of us who are subject to the Montana laws and do not commit frauds in Montana but to require us to be covered by these provisions, is tantamount to this Committee taking 400 jobs as of October 1. We don't want that to happen so we would ask your careful consideration to leave Paragraph 13 in the exemption included therein, or allow Mr. Cannon's provision. We do not sell to people under 21 or over 65, or consumers in Montana because it's a matter of economics. It's less expensive for me to call Lewiston, Maine, than it is to call Lewistown, Montana; or less expensive to call Helena, Texas, than Helena, Montana. SB 27 is designed to protect Montana's consumers but it would put us out of business by punishing and not protecting legitimate businessmen in Montana. I would ask you to take those aspects into consideration.

{Tape : 2; Side : A; Approx. Time Counter : 30.7}

Mike Voeller, Lee Newspapers of Montana. I don't know if I'm a proponent or opponent or simply shocked at the suggestion by Annie Bartos that the newspaper exemption be removed. I had testified on this bill in the previous two (2) sessions but I was not informed the striking of this exemption was in the works. I'm puzzled why local newspapers in this state would be equated with out-of-state boiler room operations when we certainly are anything but that. I spent a few seconds with Annie Bartos and she said she would talk to the sponsor about the newspaper exemption and I would strongly urge you leave that exemption in place.

Questions From the Committee and Responses:

SEN. VICKI COCCHIARELLA referred to the fiscal note and wondered about the issue of adopting rules by two (2) different entities - Department of Commerce and Department of Justice. She wasn't sure why rulemaking by the Department of Justice was needed.

Steve Bullock said they noted in the fiscal note they wouldn't need rulemaking authority. The way the enforcement is set up is basically to track how they enforced under the Consumer Protection Act. The civil work and injunctions would most likely be brought by the Department of Commerce and the money brought by that would go there as well. It's referred to them upon the Department of Commerce's request or for criminal prosecution.

Annie Bartos said the bill provided for rulemaking authority at the Department of Justice for the provisions relating to the criminal penalty provision. Provisions relating to civil enforcement rest with the Department of Commerce. There may be a need for promulgating administrative rules in terms of what would be necessary in the application or registration of the telemarketers. **SB 27** gives the agency the ability to do that.

SEN. FRED THOMAS asked about the availability of the \$50,000 bond. **Ross Cannon** said in prior sessions this was one of the major difficulties with the bill. He said the Direct Marketing Association supports the bill with the bonding provisions in it, though he sympathized with the small direct marketer because the deep-pocket telemarketers can post letters of credit but the small direct marketer cannot; if there was not an exemption for the registration requirements, he or she would be out of business.

{Tape : 2; Side : A; Approx. Time Counter : 38.6}

SEN. BEA MCCARTHY commented one of the problems with the bill in prior sessions was it regulated Montana telemarketers but not those out-of-state. She didn't notice that concern addressed in this bill either. **Annie Bartos** said the bill provided for registration and bonding of both in-state and out-of-state telemarketers who wish to engage in business in Montana.

SEN. MCCARTHY asked what could be done to speed up the process of installing caller ID in order to identify the telemarketers.

Annie Bartos said she wasn't sure the question was addressed to the telephone utility company or the telemarketer who would be contacting the Montana consumer. **SEN. MCCARTHY** said she wanted the name and phone number to show up on the machine. **Annie Bartos** said **SB 27** would not address the caller ID; rather, the telemarketer would identify him-or-herself once on the phone with the consumer.

SEN. MCCARTHY asked for help in reviewing the procedure step by step, i.e. individual makes call to me, tells me they're soliciting, tells me which company they represent and tells me he or she is registered in Montana. **Annie Bartos** said that was the basic information they were required to provide; also, they needed to say they were attempting to make a sale to the Montana

consumer on the telephone and are required to tell the consumer they have a three-day right to cancel which will be followed in writing so the consumer can make an informed choice to either keep or cancel the contract.

SEN. MCCARTHY commented according to the AARP TV ads we in Montana are pretty dumb. If I don't ask those questions, what have I got to go for me? **Annie Bartos** said if she didn't ask those questions as a consumer on the telephone, and if the telemarketer fails to follow the above procedure, he or she would be in technical violation of the bill and a complaint would be filed in their office or perhaps with the Department of Justice.

SEN. FRED THOMAS asked if this legislation would make it mandatory to pay the telephone bill if the customer had been slammed on the telephone service. **Mark Baker** said he wasn't sure **SB 27** addressed the slamming issue, i.e. unauthorized change in telephone service. There are recently issued federal rules imposed by the Federal Communications Commission that address the slamming issue. This is an issue for the Legislature and they are working with other Legislative members as well to address this as the state level.

SEN. THOMAS asked for more clarification.

{Tape : 2; Side : B; Approx. Time Counter : 0}

Steve Bullock said it wasn't because there was already a slamming law which was fully regulated by the PSC. **Kate Whitney, Public Service Commission (PSC)**, said according to the existing anti-slamming law, if the customer has been slammed, payment of the bill to the slammer is not required.

SEN. THOMAS commented there was no reason for the bill to do such and **Ms. Whitney** said the intent of **SB 27** would not affect the slamming law.

Closing By Sponsor:

SEN. HERTEL said from the testimony heard, he was certain all would agree Montana had an immense problem which needed to be taken care of. One of the testifiers mentioned Montana had the second highest per capita rate of callers making telemarketer

fraud complaints to the National Fraud Information Center, which indicates Montana has weak telemarketing fraud laws. **SB 27** would greatly help alleviate the fraudulent telemarketers from doing their crimes in Montana. I think this bill will make legitimate telemarketing businesses more reputable and strong.

SEN. MCCARTHY asked about making people aware. We do have that awareness program which hopefully will help alleviate some of your concerns. Committee, there was a tremendous amount of support for this legislation; in fact, at least 64 or 65 legislators signed onto this bill. Also, there are a lot of people who have done a tremendous amount of work on this legislation, i.e. the interim committee worked very hard to get this before us.

The fiscal note shows the Department is asking for 3 FTE's. I am concerned about spending and those FTE's will cost the state budget some money; however, we have to think of the need, which is very evident by the testimony we heard. Sometimes we have to set some things aside and think about what this bill is accomplishing for our Montana citizens.

We do have a stack of amendments which the Committee will carefully consider. I hope the Committee can look favorably to the passage of **SB 27**.

Rene Worley, AARP, Wolf Point, MT submitted her testimony **EXHIBIT(22)** after the hearing.



SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 1-15-99

BILL NO. SB 27

MONTANA STATE LEGISLATIVE COMMITTEE

Testimony Before The Senate

Business and Industry Committee

Mr. Chairman and members of the committee. My name is Bill Olson and I am representing the American Association of Retired Persons (AARP). AARP is a non-profit member organization of persons over 50 years of age. In Montana we have a membership of approximately 114,000 persons.

I appreciate the opportunity to testify on Senate Bill 27, which is a good bill, one which provides consumer protection to Montana citizens, particularly senior citizens. AARP sincerely urges you to give SB 27 a "do pass" recommendation and send it to the floor of the Senate for 2nd reading.

Each of you should have received packets containing information relative to SB 27. I would refer you to portions of that material.

The federal Telemarketing Sales Rule only provides a standard of conduct for telemarketers where a state law can provide specific consumers protections that prohibit some of the most abusive and predatory practices used by fraudulent telemarketers, including banning courier pick-ups and limiting access to consumer accounts. The forementioned are covered in SB 27.

AARP supports SB 27 that requires those businesses making telemarketing contacts with residents of Montana to be registered and bonded. The purpose of registration is to allow the state to identify those businesses doing telemarketing. The bonding requirement provides a source of recovery for consumers who are defrauded by a telemarketer. Those firms that are otherwise licensed or registered in the state, for some other reason may not be required to register. The exemptions listed in SB 27 apply to non-registration.

SB 27 addresses the following:

1. Registration and Bonding requirement to help identify Telemarketing firms doing business in Montana.
2. Extensive disclosures in prize promotions and sweepstakes.
3. Prohibitions against abusive predatory practices such as courier pick-ups, recovery rooms, and direct access to consumer bank accounts without express written authority.
4. A range of criminal penalties and civil remedies for violations of the law,



MONTANA AARP

Since the close of the 1997 legislative session, AARP, State Legislative Services, Department of Commerce, State Attorney Generals Office and the Direct Marketing Assn. (DMA), (a national trade group have worked diligently to develop a widely accepted telemarketing fraud bill. The DMA is quoted as supporting the Montana legislation and that anything that undermines consumer confidence in marketing by telephone is going to hurt legitimate telemarketers.

In conclusion, I would state that legitimate telemarketing benefits consumers. Competition increases and product and service options are expanded. AARP believes that legitimate telemarketing businesses will benefit from Senate Bill 27. Passage of SB 27 will reduce the involvement of crooks as well as force marginal operators to clean up their acts.

AARP endorses Senate Bill 27 as vitally needed legislation. All Montana consumers and particularly AARP's 114,000 members will benefit from the protection against telemarketing fraud offered by this bill. We urge favorable action by this committee and the legislature.

Thank you.

Respectfully submitted

A handwritten signature in cursive script that reads "William Olson". The signature is written in dark ink and is positioned above a horizontal line.

William Olson, Chair
AARP State Legislative Committee

Proposed Amendments to Senate Bill 27
January 15, 1999

For the Senate Business and Industry Committee

1. Page 7, line 1.

Strike: subsection (13) in its entirety

Renumber: subsequent subsections

Prepared By: Annie M. Bartos
Chief Legal Counsel
Department of Commerce
(406) 444-3553

SENATE BUSINESS & INDU
EXHIBIT NO. 7
DATE 1-15-99
BILL NO. SB 27

DRAFT
PROPOSED AMENDMENT

Amend Senate Bill 27 , Page 12, Section 11, Subsection (1) by adding a subsection (g) after line 22 to read as follows: .

(g)To accept payment for any goods or services by credit card or preauthorized check if the solicitation for sales of such goods or services is accompanied by an offer of a premium or gift or participation in a sweepstakes as inducements to encourage the purchase of the goods or services,

Jerome Turner

Amendments to SB 27
1st Reading Copy (White)

For the Senate Business and Industry Committee

Prepared by Steve Bullock
Department of Justice
January 7, 1998

1. Page 3, line 16.
Following: "**telemarketers**"
Strike: "-- **felony violations**"
2. Page 5, line 17.
Following: "of".
Strike: "[section 8, 10, 11, or 12] or".
3. Page 5, line 18.
Following: the second "of"
Insert: "[Section 14] and"
4. Page 12, line 3.
Following: "30-14-103"
Insert: "and is subject to the penalty provisions of
[Section 14] and the Montana Unfair Trade Practices and Consumer
Protection Act of 1973".
5. Page 12, line 6.
Following: "telemarketer"
Insert: "purposely or knowingly"
6. Page 12, line 23.
Following: "30-14-103"
Insert: "and is subject to the penalty provisions of
[Section 14] and the Montana Unfair Trade Practices and Consumer
Protection Act of 1973".
7. Page 12, line 25.
Following: "**practices**"
Strike: "-- **burden of proof.**"
8. Page 13, line 9.
Following: line 8
Strike: line 9 in its entirety through line 11.

9. Page 14, line 1.

Insert: **"Section 14, Penalties -- misdemeanor and felony violations -- burden of proof.**

(1) A person who fails to follow the requirements of [sections 4, 8, 10, 11 or 12] commits the offense of failure to comply with the requirements of the Montana Telemarketing Registration and Fraud Prevention Act. Except as otherwise provided in [section 11], this offense is specifically intended to be an absolute liability offense as provided for in Mont. Code Ann. § 45-2-104.

(a) A person convicted of the offense of failure to comply with the requirements of the Montana Telemarketing Registration and Fraud Prevention Act shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) Upon a second or subsequent conviction for the offense of failure to comply with the requirements of the Montana Telemarketing Registration and Fraud Prevention Act, a person shall be imprisoned in the state prison for term not to exceed 5 years or shall be fined not to exceed \$50,000, or both.

(2) A person commits the offense of telemarketing fraud when a person, knowingly violates the Montana Telemarketing Registration and Fraud Prevention Act, with the purpose of depriving an owner of property.

(a) A person convicted of the offense of telemarketing fraud in which the value of the property does not exceed \$500 shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of the offense of telemarketing fraud in which the value of the property exceeds \$500 or the person has engaged in telemarketing fraud as part of a common scheme, a person shall be imprisoned in the state prison for term not to exceed 10 years or shall be fined not to exceed \$50,000.

(3) In any criminal proceeding alleging a violation of [sections 1 through 13], the burden of producing evidence to support a defense based on an exemption under [section 5] or an exception from a definition in [section 3] is on the person claiming the exemption or exception."

Renumber: Remaining sections.

Senior Fraud Protection Network



The *Senior Fraud Protection Network* is a private-public partnership of the *Montana Senior Citizens Association*, the *American Association of Retired Persons* and State Auditor Mark O'Keefe. The network is designed to crack down on financial fraud committed against seniors in Montana.

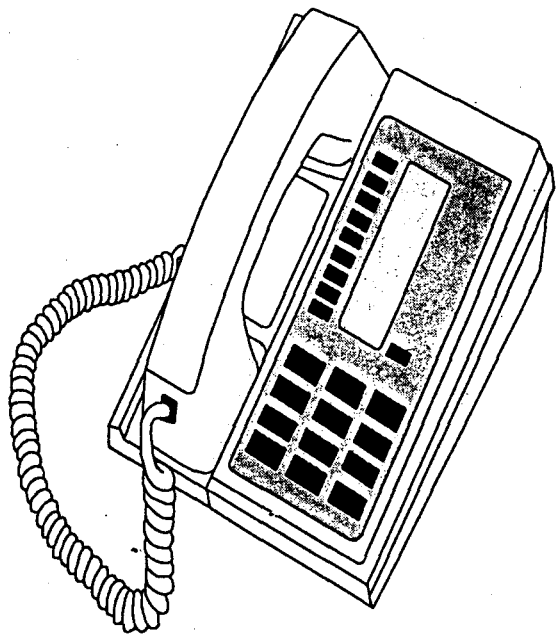
This cooperative effort zeros in on insurance and securities scam artists who target senior citizens in order to make a quick buck. Many of the fraud cases investigated by the State Auditor's Office, which regulates insurance and securities in Montana, involve seniors.

Cooperation is the key in cracking down on financial fraud committed against seniors. The Network uses senior volunteers around the state to pass on information from the Montana Securities and Insurance Departments about fraud schemes active in Montana and ways to avoid becoming a victim.

Seniors who have questions about insurance or securities fraud, or want information on the Network, should call State Auditor Mark O'Keefe's Office at 1-800-332-6148.

Important Phone Number

To report
insurance and securities fraud,
call
**State Auditor Mark O'Keefe's
Office
1-800-332-6148**



Join the
Senior Fraud Protection Network.
It's working for you!

**Montana Senior Citizens Association
American Association of Retired Persons
State Auditor Mark O'Keefe**

Help is just a phone call away

Senate Bill 27**Montana Telemarketing Registration and Fraud Prevention Act
Senate Business and Industry Committee****Testimony in Support of Senate Bill 27**

Honorable Chairman and members of the committee, my name is Eileen Miller. I am a life-long resident of East Helena, Montana. I am here in support of SB 27 because I was a scam victim in May, 1998.

I received a phone call from an individual claiming to be my grandson. Because I was surprised by the call, I used my grandson's name and related personal information. The caller used this information against me in the course of the call. This "grandson" stated he had driven to Springfield, Illinois, and was experiencing car problems. He needed \$500 for car repairs to get back to Phoenix.

The conversation appeared legitimate, as did the car problem, his inability to reach his parents, and his inability to get funds from his bank account.

I contacted my credit card company and asked that \$500 be transferred from my account to a Western Union site and the name and address given to me by this "grandson."

Several days later, I discovered I had been a victim of fraud, and I contacted the local authorities. When they responded to my report, I was told that I was the seventh or eighth victim in Lewis and Clark county to have been targeted by this particular scam. Others who had been targeted had used cash; I had fortunately used a credit card.

The credit card company's fraud unit handled my situation, and I was assured that I would not be liable for these funds.

Nine months later - this week incidentally - I was contacted by a very belligerent woman stating she was with Western Union in Springfield, Missouri. She demanded that I immediately pay the \$500 on this transaction. She was adamant that I send her the money, stating "I was obligated to pay" and "How long is it going to take you to pay this?" among other strong and demeaning comments. She also threatened me by stating she was going to "send me a letter." The only way I could get rid of her was to hang up the phone.

I immediately contacted my credit card's fraud unit over this phone conversation. Their answer? "This is fraud - you don't have to pay." Does this mean I will have to live with the possibility that sometime, someone will call me on the phone and I will have to go through this experience again? Personally, I don't want to be anxious or fearful every time my phone rings.

Eileen Miller
Box 391
East Helena MT 59635

HONORABLE CHAIRMAN, SENATOR HERTEL, AND MEMBERS OF THE COMMITTEE,
MY NAME IS MARGIT HATCHER AND I HAVE BEEN A VICTIM OF SCAM AND I AM
HERE IN SUPPORT OF SB 27.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 11

DATE 1-15-99

BILL NO. SB 27

ABOUT 4 YEARS AGO, THE TELEPHONE RANG AT MY HOME AND A MAN
IDENTIFIED HIMSELF WITH A NAME I DO NOT REMEMBER. THEN SAID HE WAS
FROM A COMPANY WHOSE NAME SOUNDED VERY CLOSE TO THE PUBLISHER'S
CLEARING HOUSE. HIS COMPANY HANDLED THE AWARDS OF THAT COMPANY.
HE TOLD ME I HAD WON \$50,000, A NEW CAR, A TRIP AND A DESIGNER WATCH. I
WAS SO EXCITED, THINKING I HAD FINALLY WON SOMETHING!! I WAS
UNEMPLOYED AND LOW ON MONEY, SO THIS SOUNDED LIKE A BLESSING IN
DISGUISE. I ASKED HIM WHAT HAPPENED NEXT. HE ASKED ME IF I HAD A
CHECKING ACCOUNT. I SAID I DID. HE THEN ASKED ME TO GET MY CHECK
BOOK. I ASKED WHY AND HE TOLD ME HE WOULD ANSWER THAT AND OTHER
QUESTIONS I MIGHT HAVE AFTER I GOT MY CHECKBOOK. I GOT IT OUT AND HE
THEN TOLD ME HE WOULD NEED \$200 FROM MY ACCOUNT TO COVER
ADMINISTRATIVE AND HANDLING EXPENSES. THAT SEEMED "NORMAL"
BECAUSE THERE ALWAYS SEEMS TO BE HIDDEN COSTS IN A LOT OF HIGH COST
THINGS. HE ALSO ASKED ME WHAT BANK I HAD MY ACCOUNT IN AND I TOLD
HIM. HE SAID THAT WAS A VERY REPUTABLE BANK. HE THEN TOLD ME TO
TEAR A CHECK OUT OF IT AND WRITE "VOID" ON IT, BUT TO GIVE HIM THE
NUMBER OF THE CHECK SO HE COULD CALL THE BANK FOR WITHDRAWAL OF
THE \$200 SO I WOULDN'T BE HASSLED WITH HAVING TO WRITE A CHECK AND

MAILING IT.. I SAID "OK"... GUARDEDLY. HE THEN ASKED ME FOR MY MOM'S NAME. I ASKED WHY HE NEEDED THAT INFO. HE SAID IT WAS FOR SECURITY PURPOSES. I WAS THEN ASKED FOR MY CHECKING ACCOUNT #, SO THAT AFTER HE WITHDREW THAT MAGICAL \$200 FROM MY ACCOUNT TO PAY FOR THE EXPENSES OF PAPERWORK FOR THE THINGS I'D WON, HIS COMPANY COULD AUTOMATICALLY TRANSFER MY WINNINGS!! I GAVE HIM THE ACCT. NUMBER. I ASKED HIM HOW LONG IT WOULD TAKE AND HE SAID NOT TOO LONG, JUST A FEW DAYS. I FELT UNCOMFORTABLE ABOUT HAVING TO WAIT FOR SO LONG FOR MY 50 GRAND AS IN MY MIND I ALREADY HAD PAID BILLS WITH THIS MONEY. I WAS ANXIOUS!!! HE THEN READ BACK MY ACCT. NUMBER BECAUSE HE WANTED TO MAKE SURE HE HAD MY ACCT. NUMBER CORRECT. HE SAID HE WOULD HATE TO PUT MY WINNINGS IN THE WRONG ACCOUNT. WE BOTH LAUGHED, HE CONGRATULATED ME AGAIN AND WISHED ME GOOD LUCK IN OTHER SWEEPSTAKES AND WE SAID GOODBYE.

ALTHOUGH FEELING A BIT UNCOMFORTABLE ABOUT WHAT I HAD WON AND DONE, I FELT GREAT ABOUT HAVING WON SOME MAJOR PRIZES. I CALLED MY MOTHER AND TOLD HER WHAT HAD HAPPENED, THAT THIS MAN HAD ASKED FOR HER NAME FOR SECURITY PURPOSES, AND SHE SAID I'D BETTER BE CAREFUL AND TO CALL MY BANK ABOUT THIS. I WAS UPSET THAT SHE HAD "BROKEN MY BUBBLE", SO I CALLED MY BOYFRIEND, NOW HUSBAND JIM, AND TOLD HIM WHAT HAD HAPPENED. HE TOLD ME GENTLY, SOMETHING DIDN'T SEEM RIGHT. HIS REACTION SEEMED TO CONFIRM THAT MY UNCOMFORTABLE

GUT FEELING WAS APPROPRIATE. I MAY HAVE BEEN SCAMMED. WE TALKED ABOUT IT FOR A LITTLE BIT AND HE, TOO, SAID I SHOULD CALL THE BANK FIRST THING IN THE MORNING AND TALK TO THEM ABOUT IT. I HAD A VERY UNEASY NIGHT AND CALLED MY BANK AT 9AM SHARP, TALKED TO MY PERSONAL BANKER AND SHE TOLD ME TO COME DOWN RIGHT AWAY TO DISCUSS THIS WITH HER. I WENT DOWN THERE AND SHE SAID I WAS PROBABLY SCAMMED AND WE DECIDED I SHOULD CLOSE THAT ACCOUNT NOW , AND OPEN UP A NEW ONE. WE FOUND OUT THAT NOTHING HAD BEEN WITHDRAWN YET, THANK GOD!!! I HAD TEARS IN MY EYES, THINKING HOW CLOSE I HAD COME TO BEING SCAMMED, BUT VERY HAPPY I HAD MADE SOME CALLS AND FOUND OUT WHAT TO DO.

I WAS UNAWARE THAT THINGS LIKE THIS CAN HAPPEN IN HELENA, LET ALONE MONTANA. I WAS YOUNGER, UNEMPLOYED, WITH LOW ESTEEM, NOT MUCH MONEY, AND I FELL PREY TO THIS SLICK TALKER.. I WAS GRASPING FOR A HAPPY ENDING TO MY LOW FINANCES, AND THIS SITUATION SEEMED TO BE MY "WINDOW OF OPPORTUNITY".

THESE "ARTISTS" NEED TO BE STOPPED AND WE NEED TO BE EDUCATED SO THAT ANYONE, YOUNG OR OLD, NO MATTER WHAT KIND OF FINANCIAL OR ANY OTHER SITUATION THEY ARE IN WILL KNOW WHAT TO DO IF/WHEN THESE "SILVER TONGUED DEVILS" PREY ON US AGAIN. THANK YOU .

Amendments to Senate Bill 27
Introduced Bill

Requested By State Farm Insurance Company
Prepared By Gregory A. Van Horssen
January 18, 1999

1. Page 6, line 18.

Following: "part 2;"

Delete: ";"

Insert: "or staff members, licensed or unlicensed, of the
producer;"

-END-

DRAFT
PROPOSED AMENDMENT to SENATE BILL 27

SENATE BUSINESS & INDUST

EXHIBIT NO. 13

DATE 1-15-99

BILL NO. SB 27

Add language to exclude FCC-regulated companies from the registration requirement in section 4. This would be accomplished by amending section 5(10) to read:

"(10) a telephone company or its subsidiary or agent or other business regulated by the Montana public service commission, the federal communications commission, or a federally licensed cellular telephone or radio telecommunication service provider;"

Amendments to Senate Bill No. 27
1st Reading Copy

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 15

DATE 1-15-99

BILL NO. SB 37

For the Business and Industry Committee

Prepared by Bartley Campbell
January 14, 1999

1. Page 6, line 22.

Following: "commission"

Insert: ", a rural telephone cooperative^x or its subsidiary or agent,"

- END -

Amendment

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 16

DATE 1-15-99

BILL NO. SB 27

Mr. Chairman, members of the Committee,
for the record my name is Jeanne
Bauman, Government Relations Consultant
for the Montana Credit Unions League.

We support this bill but suggest one
minor amendment. On page 3, line
8, after the words "agency of" we ask
that the words "the United States or of"
be inserted so it will read

"Subject to supervision by an agency of
the United States or of this or any other
state of the United States." This amendment
is needed to include federally chartered
financial institutions in this definition.

Juno e-mail printed Sat, 2 Jan 1999 19:31:55 , page 1

From: hlicart
Full-Name: Hilda Funk
To: Hi Betty
Subject: Telemarketing Fraud
X-Status: New

I got involved in a Telemarketing scam sometime in March of 1997 when a guy by the name of George (never gave his last name) called me and gave me his salesman pitch on multi-marketing that I could get involved in and make lots of money in a very short time. I can't remember all the items that he was including in the package and they really were never listed as such. He would call almost every day and had a very soft persuasive manner and voice. If I would send him \$3395.00 then he would send me a packet that I could scrutinize and if I decided not to except this offer, there was a 30 day money back guarantee and there wouldn't be any problem getting my money back as long as I returned the packet - which I did in plenty of time. I also want to emphasize that this program was sanctioned by Robin Leach.

When I didn't receive my money back, I went to see an attorney and he tried to contact them but could never reach anyone. We had the same luck. Whenever we tried to call the ladies at the answering desk would tell us that they would forward our message and have them return our call which, of course, never happened.

AL FUNK
3364 Grandview RD.
East Helena, MT 59635

DEPARTMENT OF COMMERCE
OFFICE OF CONSUMER AFFAIRS
1424 NINTH AVENUE
P.O. BOX 200501
HELENA, MONTANA 59620-0501

PHONE: (406) 444-4312

CONSUMER COMPLAINT

(Please print or type)

Party Complained of FIDENTY ALLIANCE MARKETING GROUP Your name ALVIN FUNIX
Mailing address 1372 BROADWAY Mailing address 3364 GRANDVIEW RD
8th FLOOR
City NEW YORK, NY 10019 City EAST HELENA, MT. 59635
(State) (Zip) (State) (Zip)

Telephone No. 212-725-4300 Telephone No. (Home) 227-7662
(Business)

Date of Transaction 3-12-97 Manager or Salesperson GEORGE

PRODUCT OR SERVICE INVOLVED MLM PACKAGE BUSINESS OPPORTUNITY
(Model #) (Serial #)

Purchase Price of Product \$ 3,395.00
Approximate Cost of Repair or Replacement \$ 3,395.00

Was a contract signed? Yes () No (✓) (If so, please attach copy.)

IF YOUR COMPLAINT RELATES TO FALSE ADVERTISING OR DECEPTIVE TRADE PRACTICES,
INDICATE WHEN AND WHERE THE PRODUCT OR SERVICE WAS ADVERTISED. (If possible,
attach a copy of the advertisement.)

Was a warranty issued: Yes () No (✓) (If so, please attach a copy.)

Financial Institution Involved, if any _____

Referred by: (Name and address of private attorney or legal aid group, etc.)

JIM RICE 833 NORTH EAST CHANCE GULCH, HELENA, MT.

Have you contacted the party complained of? Yes (✓) No ()
Have you retained a private attorney? Yes (✓) No ()

(COMPLETE REVERSE SIDE OF THIS PAGE)

FULLY EXPLAIN THE NATURE OF YOUR COMPLAINT. (Describe events in the order in which they occurred. Use additional pages if necessary.)

I ORDERED A MEM PROGRAM FROM FIDELITY ALLIANCE MARKETING
BUT WHEN IT GOT HERE I LOOKED IT OVER AND DESIDED TO
RETURN IT RIGHT AWAY, AS THERE WAS A THIRTY DAY TIME
LIMIT ON RETURNS FOR A REFUND. BUT A REFUND WAS
NOT RECEIVED.

State the relief you desire, i.e. refund, repair, etc.

\$ 3395.00

I UNDERSTAND THAT THE STATE HAS FULL DISCRETION CONCERNING ITS ACCEPTANCE, INVESTIGATION, AND RESOLUTION OF THIS COMPLAINT, AND THAT THE STATE CANNOT ACT AS MY ATTORNEY AND NO ATTORNEY/CLIENT RELATIONSHIP IS ESTABLISHED AS A RESULT OF ANY ACTIVITIES UNDERTAKEN IN MY BEHALF. I HEREBY AFFIRM THAT THIS COMPLAINT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HEREBY AUTHORIZE THE USE OF MY NAME AND THIS COMPLAINT IN INVESTIGATING THE COMPANY OR INDIVIDUAL COMPLAINED OF.

DATE: 4-8-98

SIGNED: *Alvin Lumb*

(Please attach copies of all documents that have a direct bearing on the complaint.)

The following voluntary information will help us determine who we serve. This data will be used for statistical purposes only.

- (1) Your age (circle one) 18-30 31-40 41-50 51-60 Over (60)
(2) Are you Handicapped? Yes ☒ No ☐ DISABLED
(3) If you are a minority member, designate which: _____



MONTANA
DEPARTMENT OF COMMERCE

Office of Consumer Affairs
1424 9th Avenue PO Box 200501
Helena, MT 59620-0501

SENATE BUSINESS & INDU
EXHIBIT NO. 18
DATE 1-15-9
BILL NO. SB 27

Phone: (406)
TDD: (406)

April 21, 1998

ALVIN FUNK
3364 GRANDVIEW ROAD
EAST HELENA MT 59635

RE: Fidelity Alliance Marketing Group

Dear Mr. Funk:

The Department of Commerce has reviewed the information you provided relative to the problems you have had with Fidelity Alliance Marketing Group. Following the review of the file the following observations are made.

There is a document in the file that provides that Fidelity Alliance Marketing Group filed for bankruptcy on May 23, 1997, Case No. 97B43473(sb). The deadline to file a complaint objecting to dischargability of certain types of debts was September 12, 1997. The Petition for Bankruptcy was for a Chapter 7, which is a total liquidation of assets.

The Notice also states "at this time there appears to be no assets available from which payment may be made to unsecured creditors. Do not file a proof of claim until you received notice to do so."

It appears that you have not received a court notice to file a claim as an unsecured creditor, as the meeting of the creditor was scheduled on July 14, 1997. It appears that there are no assets to cover unsecured creditors, otherwise the court would have sent a proof of claim form to you.

The bankruptcy does protect the debtor from certain actions from the creditors. It is most likely that this bankruptcy action would also preclude any governmental agency from filing any lawsuits against the Petitioner. The Bankruptcy Notice is stated "as a creditor who is considering taking action against the debtor or the property of the debtor should review section 362 of the Bankruptcy Code if they wish to seek legal advice."

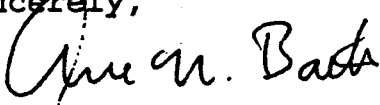
As you indicated your Attorney, James Rice has also worked with you on this case, and advised that there is not much he would be able to assist you with in this matter.

Alvin Funk
April 20, 1998
Page 2

Please be advised that in the future when dealing with Multi-Level Marketing plans, sweepstakes or any other contests through the mail or over the telephone it is a very risky investment and not a wise one to make. The Department has included brochures and information for you to review relative to these type of offerings.

I regret that the Department was not able to assist you in this matter further, but due to the bankruptcy pleadings filed your recourse is very limited. You should further consult with Mr. Rice your attorney to determine whether there are alternatives you may have in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Annie M. Bartos".

Annie M. Bartos
Chief Legal Counsel

United States Bankruptcy Court

Southern District of New York
NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 7 OF THE BANKRUPTCY CODE,
MEETING OF CREDITORS, AND FIXING OF DATES
(Individual or Joint Debtor Asset Case)

Case No. 97 B 43473 (SMB)

In re
FIDELITY ALLIANCE MARKETING GROUP, LLC.
TAX I.D. NUMBER 13-3857972,
Debtor

Address of Debtor
1372 BROADWAY
New York, NY 10018

Date Case Filed (or Converted)
5/23/97

Name and Address of Attorney for Debtor
Gregory Messer
Jacoby & Meyers
423 Fulton Street
Brooklyn, NY 11201
Telephone Number 718-858-1474

Name and Address of Trustee
Sarah Lichtenstein, Esq.
c/o Morris, Cohen, Singer & Weinstein, Esq.
750 Lexington Avenue, 7FL
New York, NY 10022
Telephone Number 212-735-8650

AT THIS TIME THERE APPEAR TO BE NO ASSETS AVAILABLE FROM WHICH PAYMENT MAY BE MADE TO UNSECURED CREDITORS. NOT FILE A PROOF OF CLAIM UNTIL YOU RECEIVE NOTICE TO DO SO.

DATE, TIME, AND LOCATION OF MEETING OF CREDITORS

July 14, 1997 at 11:00 am, Office of the United States Trustee, 80 Broad Street, 2nd Floor, New York, N Y 10004

DISCHARGE OF DEBTS

Deadline to File a Complaint Objecting to Dischargeability of Certain Types of Debts: September 12, 1997

COMMENCEMENT OF CASE. A petition for liquidation under Chapter 7 of the Bankruptcy Code has been filed in this court or against it or persons named above as the debtor, and an order for relief has been entered. You will not receive notice of all documents filed in it. All documents filed with the court, including lists of the debtor's property, debts and property claimed as exempt, are available for inspection in the office of the clerk of the bankruptcy court, at the address below, during posted business hours.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS. A creditor is anyone to whom the debtor owes money or property. Under the Bankruptcy Code the debtor is granted certain protection against creditors. Common examples of prohibited actions by creditors are contacting the debtor to demand repayment, taking action against the debtor to collect money owed to creditors or taking property of the debtor, and starting or continuing foreclosure actions, repossessions or wage deductions. If unauthorized actions are taken by a creditor against a debtor, the court may void those actions. A creditor who is considering taking action against the debtor or the property of the debtor should review Section 36 of the Bankruptcy Code and may wish to seek legal advice. The staff of the clerk of the bankruptcy court is not permitted to give legal advice.

MEETING OF CREDITORS. The debtor is required to appear on the date, time and location of the meeting of creditors set forth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, the creditors may elect a trustee other than the one named above, elect a committee of creditors, examine the debtor, and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time to time by notice at the meeting, without further notice to creditors.

LIQUIDATION OF THE DEBTOR'S PROPERTY. The trustee will collect the debtor's property and convert any that is not exempt into money. If the trustee can collect enough money and property from the debtor, creditors may be paid some or all of the debts owed to them.

EXEMPT PROPERTY. Under state and federal law, the debtor is permitted to keep certain money or property as exempt. If a creditor believes an exemption of money or property is not authorized by law, the creditor may file an objection. An objection must be filed not later than 30 days after the conclusion of the meeting of creditors.

APPOINTMENT OF TRUSTEE. The United States Trustee appoints the above individual as the interim trustee. The trustee shall serve on a blanket bond. The Trustee may abandon property of the estate with notice of abandonment to the court, 11 U.S.C. Section 554 (a). Further notice will be provided on request only. Any non-exempt property scheduled, but not administered, will be deemed abandoned, 11 U.S.C. Section 541(c)(2).

DO NOT FILE A PROOF OF CLAIM UNLESS YOU RECEIVE A COURT NOTICE TO DO SO

Address of the Clerk of the Bankruptcy Court
1 Bowling Green, 5th Floor
New York, NY 10004

For the Court:
CECELIA G. MORRIS
Clerk of the Bankruptcy Court

PLEASE CHECK DATE, TIME AND LOCATION OF MEETING ABOVE

Dated: June 19, 1997

BBB PUBLICATIONS

BBB MEMBER ROSTER- A list of companies which are members in good standing with the Bureau. These publications are available for free with no fees for shipping and handling.

- ☐ New York City Members
- ☐ Long Island Members
- ☐ Mid-Hudson Members

You can order the **NEW YORK GIVING GUIDE** with this form. This 48 page book lists almost 400 New York Metropolitan area charities which have been evaluated by the Philanthropic Advisory Service of the Better Business Bureau. The cost for this book is \$7.60, including postage and handling.

- ☐ New York Giving Guide

You can also order the **LONG ISLAND GIVING GUIDE** with this form. This 52 page booklet lists nearly 300 Nassau/Suffolk charities which have been evaluated by the Philanthropic Advisory Service of the Better Business Bureau on Long Island. The cost for this publication is \$7.60, including postage and handling.

- ☐ Long Island Giving Guide

BBB PUBLICATIONS: If you would like to order any of the other BBB publications listed below, simply check it off, complete the back of this form and return it. You may order up to four publications for \$1.50 postage and handling charge. Additional copies are \$1.50 postage and handling for each four publications ordered.

- ☐ Buying a New Car
- ☐ Buying a Used Car
- ☐ New and Used Car Lemon Laws (New York State)
- ☐ Auto Repair Advisory
- ☐ Travel Tips
- ☐ Air Traveler Rights
- ☐ Tips on Air Ticket Consolidators
- ☐ Choosing A Bank
- ☐ Choosing a Secured Credit Card
- ☐ Fixing Bad Credit
- ☐ Loan Scams
- ☐ Mortgage Bankers and Brokers
- ☐ Recovering Unclaimed Assets
- ☐ Choosing an HMO
- ☐ Guarding Against Telemarketing Rip-offs
- ☐ Choosing a Pre Paid Calling Card
- ☐ Tips on Life Insurance

Jackson & Rice
Counselors at Law

Gregory A. Jackson
James A. Rice, Jr.
Kenneth H. Gray
of counsel

833 North Last Chance Gulch
Helena, Montana 59601
(406) 443-2140
Fax (406) 443-3727

MEMO

To: Al Funk
From: James A. Rice
Subject: Enclosure
Date: August 1, 1997

Enclosed please find enclosed a document we received from the BBB for you.



Kandy J. Köhles
Legal Secretary



The Better Business Bureau® Serving Metropolitan New York

257 Park Avenue South, New York, NY 10010-7384
e-mail bbb@bway.net

266 Main Street, Farmingdale, NY 11735-2642
30 Glenn Street, White Plains, NY 10603-3248

FILE REPORT

Issued: 07/17/9

Fidelity Alliance Marketing Group, L.L.C.
Fidelity Alliance Marketing
Fidelity Alliance Group
1372 Broadway, 8th Floor
New York, NY 10019
212-725-4300

formerly located at: 270 Madison Avenue, New York, NY 10016
7 W. 36th Street, New York, NY 10018

According to information in the Better Business Bureau's file:
it was established in 1995. Mr. Joel Gutterman is Managing Partner.
This firm offers multi-level marketing programs
The Bureau's file opened in 1/96 .

This firm has an unsatisfactory rating which is the Bureau's lowest rating.

This firm charges advance fees ranging from \$2,000-\$5,000 to become a distributor for its marketing program.

In October 1996, the BBB requested that the firm substantiate its advertising, including earning claims, proof the firm was honoring its refund policy, and evidence that the product was marketable.

The firm failed to provide this requested information.

Complaints have alleged that the firm failed to honor its money back guarantee.

This firm has filed for bankruptcy. Investors seeking a refund need to request a proof of claim form by writing to: US District Bankruptcy Court, 1 Bowling Green 6th floor, New York, NY 10004. The docket number for the case is 97B-43473.

This firm has received 12 complaint(s) in the last 36 months. 11 of those 12 complaint(s) were filed in the last 12 months.

Our records indicate that this firm has failed to substantiate its advertising claims upon request by the Bureau.

Complaints to the Bureau have alleged:
failure to provide refunds or adjustments.
misleading advertising

This firm has a pattern of not responding to complaints brought to its attention by the Bureau.

Better Business Bureau reports are based on our experience with the firm over the past three years. They are intended to provide information and do not recommend or endorse any company.

7060



The Better Business Bureau® Serving Metropolitan New York

257 Park Avenue South, New York, NY 10010-7384
e-mail bbb@bway.net

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7060

RECEIVED

JUL 31 1997

JACKSON & RICE

07/23/97

Alvin Funk
C/O 833 N.Main St.
Helena, MT 59601

FROM: Marco Carrion
Complaint Mediator

CASE #: 342991

Thank you for your letter. After reviewing it, we find that the issues y
raise are not within the scope of BBB activity. The Bureau does not:

- provide legal services or advice
- make collection of wages or debts
- handle employee/employer disputes
- handle tenant/landlord disputes
- handle any type of discrimination disputes
- intervene where a court has rendered a decision
- handle a complaint against a government agency
- handle complaints involving the competency of professionals, such as
doctors or lawyers
- handle complaints against individuals
- handle cases that are currently in litigation
- handle disputes involving consequential damages

Since your complaint does involve one of the above issues, we are unable
proceed any further.

The BBB does provide prepurchase information to inquirers; conducts media
and arbitration of complaints on issues other than the above list.

However, we recommend you contact the following for assistance:

US District Court Bankruptcy Court - All NYS
One Bowling Green, 6th Fl.
New York, NY 10004

Bklyn, SI, Queens, Nassau, Suffolk: 718-330-2808, 75 Clinton Street,
Brooklyn, 11201 - Manhattan, Bronx: 212-668-2867

Mid-Hudson area:

Westchester County: (914) 682-6117--All other counties: (914) 452-4200
101 East Post Rd. PO Box 1000
White Plains, NY 10601 Poughkeepsie, NY 12602

** \$15 charge for information *****
Individuals or corporations file petitions for bankruptcy here. To ob-
tain info about a company believed to have declared bankruptcy, go in
person to the appropriate office or write--no phone inquiries accepted

(COMP16/AM)



The Better Business Bureau® Serving Metropolitan New York

257 Park Avenue South, New York, NY 10010-7384 • Tel: (212) 533-7500 • Fax: (212) 477-4012

RECEIVED

MAY 27 1997

JACKSON & RICE

5/21/97

Alvin Funk
C/O 833 N. Main St.
Helena, MT 59601

Case #: 342991

The Better Business Bureau would like to help with your complaint. Through mediation, we will try to find a fair and amicable solution for both you and the business involved. In fact, we are generally able to help 2 out of every 3 consumers who file with the BBB.

No matter what the outcome, your complaint will become a matter of record in the company's file for possible future use. Not only can you help us warn other consumers about a problem, but you can also affect how the company does business in the future.

In completing the COMPLAINT FORM, please include the business name and address, product or service involved, date of transaction, dollar amount, and a brief explanation of your problem.

Where appropriate, please send TWO PHOTOCOPIES of the following:

CANCELLED CHECKS (front and back copies only), CONTRACTS, GUARANTEE, RECEIPTS and any other relevant documents.

Your complaint will be most effective if it is brief and to the point. We will send or fax a copy of the complaint to the business which will have 15 business days to respond. It usually takes 4 to 8 weeks to mediate a complaint. If you do not get a response within that time, please call the New York BBB at (212) 533-7500. **DO NOT CALL BACK ABOUT YOUR COMPLAINT ON THE 900 NUMBER.** If you do, you will be charged again and we will be unable to connect you to your complaint mediator.

We hope to be of assistance to you and will make every effort to resolve your problem.

COMPLAINT MEDIATION DEPARTMENT



The Better Business Bureau® Serving Metropolitan New York

257 Park Avenue South, New York, NY 10010-7384 • Tel: (212) 533-7500 • Fax: (212) 477-4912

Case #: 342991

Date of Call: 5/21/97

Name: Alvin Funk
C/O 833 N. Main St.
Helena, MT 59601

Home Phone: _____

Work Phone: 406 - 443 - 2140

(Number of my attorney:
James A. Rice, Jr.)

COMPLAINT INFORMATION (please print or type)

Company's Name Complaining Against: Fidelity Alliance Marketing Group, LLC.

Address: 1372 Broadway

City: New York State: NY Zip Code: 10018 Business Phone: 1-800-380-2642

Date Purchased: 3 / 12 / 97 Date problem first occurred: / /

Have you complained to the business? Yes If yes, to whom: Staff Answering Phone. Asked for George Wilson, but was not put through to him.

Purchase Price: \$ 3,395.00 Amount in Dispute: \$ 3,395.00

Product or service involved: "Beat The System" Portfolio Savings Kit

Brand name or Mfr: _____ Model name or number: _____

Order, contract or policy number: _____ Salesperson: George Wilson

If advertising is involved: Date: / / (TV - Radio - Newspaper - Magazine - Flyer)
(circle one and enclose copy)

Give brief description of problem: (Please use additional paper, if necessary.)

I bought the kit so I could review it and understand it. The program had a
"30-day unconditional money-back guarantee", as mentioned in the flyer and as
told to me personally. Within the 30-day period, I returned the program by
certified mail and asked for a refund. A refund was never provided to me or
to my attorney. Copies of all documents are attached.

Settlement you seek: A refund of \$3,395.00.

Your Signature: Alvin Funk Date: 6/12/97

5-104 - APPROVED
CHAS. F. H. H.
1917

APRIL 2ND, 1917

FIDELITY ALMANAC MARKETING

372 BROADWAY

NEW YORK, N.Y.

DEAR SIR:

AFTER REVIEWING THE MATERIAL YOU SENT ME I
HAVE DECIDED NOT TO PARTICIPATE IN THIS PROGRAM SO I AM
RETURNING THIS MATERIAL IN ITS ORIGINAL CONDITION FOR
A FULL REFUND.

THANK YOU

SINCERELY

Wm. L. Ford.

ALVIN FUNK
3364 GRANDVIEW RD
E HELENA MT 59635-300964

To: Alvin Funk
From: Customer Satisfaction department
Date: June 03, 1997
Subject: Billing inquiry
Account: 5490 9906 6870 4669

You recently questioned the \$3,395.00 charge from Access Check.

Based on the circumstances of your dispute, we are unable to credit your account. Regrettably, we have no right to intervene in a business venture. Any credit to your account must come from the payee directly. We urge you to continue working with them to resolve this matter.

If you have any questions, please call (800) 457-3693, Monday through Friday from 8 a.m. to 9 p.m. (Eastern time).

DSPARB
(DSP CA05)

22

ALVIN FUNK
3364 GRANDVIEW RD
E HELENA MT 59635-300964

To: Alvin Funk
From: Customer Satisfaction department
Date: May 14, 1997
Subject: Billing inquiry
Account: 5490 9906 6870 4669

You recently questioned one or more charge(s) for \$3,395.00 from Fidelity Alliance Marketing Group. To help you obtain a refund, we need more information. Because of the strict time limits for resolving billing disputes, you must respond within three weeks of the date of this letter; otherwise, the matter will be considered closed.

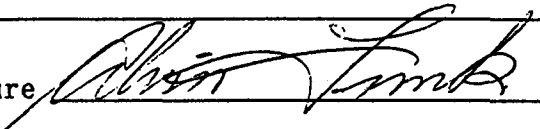
Please send the applicable document(s) along with this letter, placing a check mark beside the item(s) you are enclosing:

- ☒ 1. Copy of the return receipt from the post office, UPS, FedEx, etc., signed by the merchant, acknowledging receipt of the returned package. If necessary, contact the package handler to obtain a tracer with the merchant's signature.
- ☐ 2. Copy of a credit slip or written advice from the merchant acknowledging that a credit is due to your account.
- ☐ 3. Copy of a written acknowledgment that the merchant accepted this merchandise from you and it is in his/her possession.
- ☐ 4. Copy of a tracer confirming delivery of this merchandise.

Also, read the following statement. If it accurately describes your situation, sign and date as indicated. Please do not change the wording of this statement.

I did engage in the transaction(s), but I returned the merchandise on (date) April 2, 1997, and have not received credit.

I returned the merchandise because it had a 30 day
no risk trial period to review. It was different
than I had understood, and I did not want
to purchase the package -

Signature  Date May 21, 1997

Account No. 5490 9906 6870 4669

Mail this letter and the requested documentation to P.O. Box 15026, Wilmington, DE 19885-5026. A postpaid envelope is enclosed for your convenience.

You do not have to pay any disputed amount before the investigation is complete. Additionally, disputed amounts are not included in the minimum monthly payment calculation.

If you have any questions, please call (800) 457-3693, Monday through Friday from 8 a.m. to 9 p.m. (Eastern time).

Enclosure

DSPAMC
(DSP AI14)

100

Jackson & Rice
Counselors at Law

Gregory A. Jackson
James A. Rice, Jr.

833 North Last Chance G
Helena, MT 59601
(406) 443-2140
FAX (406) 443-3727

May 7, 1997

SENT BY EXPRESS MAIL

Fidelity Alliance Marketing Group, LLC
1372 Broadway, 8th Floor
New York, NY 10018

Dear Madam or Sir:

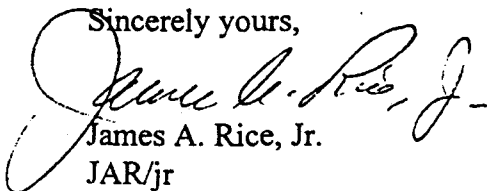
I represent Mr. Alvin Funk, 3364 Grandview Road, East Helena, Montana.

Mr. Funk responded to your "Beat the System" marketing program offer and paid \$3,395.00 to your firm to become a distributor. His contact with your company was a Mr. George Wilson. After reviewing the materials he received, he returned them and asked for a full refund by certified letter received by your office on April 7, 1997. Despite the assurances in your marketing materials of a no risk trial opportunity, Mr. Funk has still not received the refund he requested.

Please immediately issue a refund check in the amount of \$3,395.00, made payable to Mr. Alvin Funk, and forward the same to my office. In the event the refund is not received by May 15, 1997, I will contact state authorities in New York and Montana, and/or consider further legal action.

Thank you for your immediate attention to this matter.

Sincerely yours,



James A. Rice, Jr.

JAR/jr

cc: Mr. Alvin Funk

ALVIN FUNK
POB 9024
HELENA MT 59604

654 NF

PAY TO THE
ORDER OF

FIDELITY ALLIANCE MARKETING GROUP, LLC

\$ *3395.00*

THREE THOUSAND THREE HUNDRED & NINETY FIVE *xx/100* DOLLARS

MBNA America
Newark, Delaware

FOR

MEMBERSHIP DISTRIBUTOR

⑆031100160⑆ 90668704669⑈807654

"*B*eat The System

is one of the greatest

values I've ever seen...

it changed these peoples'

lives for the better.

Why not let it change yours?"



—Robin Leach,
TV Celebrity, star of *Lifestyles
of The Rich and Famous*.

\$65,000



"I saved and earned more than I
had ever hoped for."

—Jan Peterson

\$18,700



"We saved \$1,500 on our new car!"

—Mr. & Mrs. Elvis Magnetic

\$90,000



"This program has changed my life!"

—Paul Capo



*The National Business
Opportunity Bureau
protects the interest of the consumer.
Its members have pledged to
conduct their business activities
in an ethical manner.*

The System

is a unique program

with all the ingredients

for your success!"

—Robin Leach



**FIDELITY ALLIANCE CAN
GUARANTEE YOUR LIFESTYLE!**

The downsizing and merging of major American businesses have most people concerned about job security and retirement income. And rightly so. At Fidelity, we thought it was the right time to make available an aggressive program that would assure you of an unencumbered lifestyle. Here is the first direct selling program where the value of the product is worth many times the cost of the program.

***Fidelity Alliance
helps you make
money 3 ways!***

Saving substantial amounts of money right away.

Earning significant income by sharing your savings opportunities with others.

Multiplying your earnings with the help of an optional lead generation and sales support program.

***And there's
absolutely
no risk involved!***

No-Risk because each of these money making propositions are protected. You'll learn more as you read on.

**THE "BEAT THE SYSTEM" PROGRAM
PORTFOLIO IS MADE FOR YOU**

It's a product with unlimited appeal and unlimited potential...it's money! In this Portfolio that contains \$25,000 in savings and count certificates for use products and services want or use every day. So that will make a substantial impact on your buying power so that you'll be able to save and enhance your life. You'll feel as if you purchased money at a fraction of value. And you have!

**YOUR VERY FIRST SAVINGS
CAN PAY FOR THE PROGRAM
MANY TIMES OVER!**

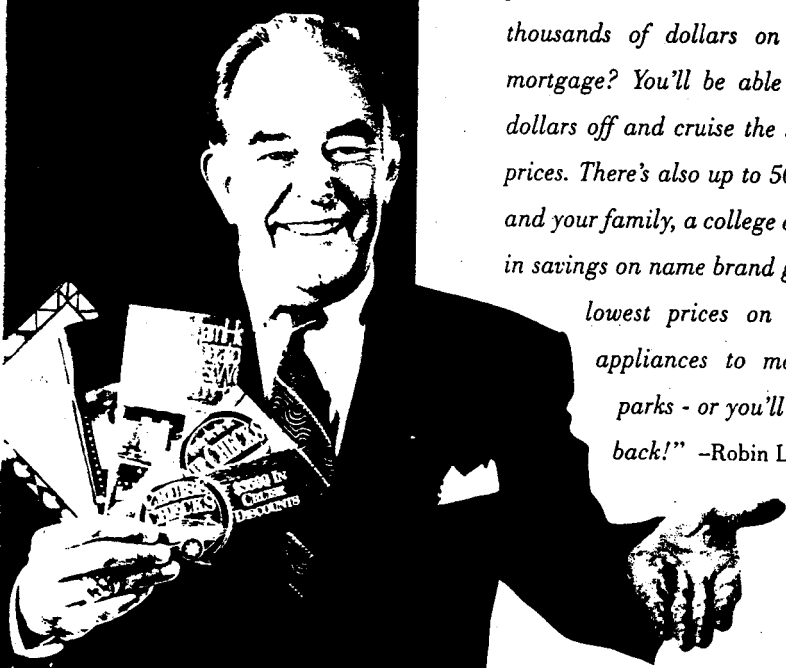
Buy pharmaceuticals at less than wholesale. Fly major airlines at discounted fares. Save on virtually every item you buy. Add thousands to a college financial aid package. That's only a taste of what you can do as you read on. There is No-Risk to this product purchase. If you change your mind, return the product to us within 30 days and receive all of your money back.

The combination of High Value and No-Risk is what makes this product so successful. Successful enough to generate over \$1 million a month in sales — and grow at a rate of 20% per month!



"So much value...
I recouped the cost
on my first purchase."

—Jon Peterson



"You buy a product with
universal appeal *and* an unlimited
market...a product that sells itself

—Robin Leach

"A penny saved is a penny earned. Every penny you
save increases your buying power and enhances your
lifestyle. Here's the opportunity to put more than
\$25,000 of that buying power in your pocket. What
do you think of buying your next car at the lowest
price available? How would you like to save tens of
thousands of dollars on your current or future
mortgage? You'll be able to fly major airlines at
dollars off and cruise the seven seas at two-for-one
prices. There's also up to 50% off eyeglasses for you
and your family, a college aid program, over \$5,000
in savings on name brand groceries and guaranteed
lowest prices on everything from major
appliances to movie tickets and theme
parks - or you'll get double the difference
back!" —Robin Leach

Find out how you can
all this at a fraction of its value

Call 1 (800) 380-26

Operators are standing by 24 hours a day

ou save more than \$25,000!
Look at these savings opportunities:

The Beat The System

Discount Benefits Program

Guaranteed lowest prices on over 250,000 nationally advertised goods and services including appliances, electronics, prescription drugs, vitamins, eyewear, rentals and more. If, within 30 days, you find your item advertised for less you'll receive double the difference back.

The Beat The System

\$5,000 Super-Savings on Groceries

Manufacturers discount coupons with no expiration date. Choose your favorites from among 1,000 name brand products. Use on double or triple coupon days for more savings!

The Beat The System

Financial Aid Program

College Financial Aid professionals can add thousands of dollars to your aid package. Even families with a six figure income can qualify and receive funds.

The Beat The System

Mortgage Acceleration Program

Save literally tens of thousands of dollars on mortgage interest without changing your bank.

The Beat The System

Car Locator Program

Buy any new car with any optional package at the lowest price available and have it delivered to a dealer near you.

The Beat The System

Travel Program

Up to 50% discount off rooms at thousands of hotels and resorts. Up to 50% off green fees at major golf courses. Good for both domestic and international destinations.

The Beat The System

Air and Cruise Checks

Save up to a total of \$5,000 on airfares on most major airlines. Save up to a total of \$3,500 on most cruise lines. Individual cabin discounts up to \$1500 on cruises.

You'll also receive:

- Dining Cards
- Long Distance Telephone Savings
- Rebates on Sale or Purchase of a Home
- Legal Referrals
- And much much more!

"You can
believe me
when I tell
you that
Fidelity's
'Beat The
System'
Portfolio of
Savings is
the greatest
money-saving
opportunity
I have ever
seen!"

—Robin Leach



"We saved \$1500 on our new car. And, in just 2 months we earned over \$18,000!"
—Mr. & Mrs. Elvis Magnetic

Couldn't you use these savings?

Call 1 (800) 380-2642

Operators are standing by 24 hours a day!

**You earn from \$625
to \$1,500 on each sale!**

If you know anything about network marketing you know that in most cases it takes a big effort to earn a small amount. Not so with Fidelity! You will never earn less than \$625 when you make a sale. That's so rich a minimum commission that it's almost unheard of in this industry! Fidelity offers it because we know that when distributors earn significant money they strive to earn even more.

You know the incredible value of the "Beat The System" product. You know that you can save more than \$25,000 on products and services you use or want everyday. You know that it will make a positive impact on your lifestyle. Under normal circumstances wouldn't you tell your friends and family about this incredible opportunity? Of course you would. So why not earn significant commissions when you do?

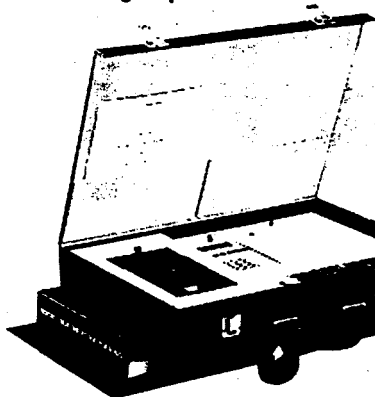


"This program has changed my life. Before I started I was almost bankrupt. In my first year with Fidelity I've earned over \$90,000."
—Paul Capo

ACT NOW BONUS!

*To start you
out saving
immediately
call within
72 hours and
you'll receive
a special bonus
of two
FREE
vacation
packages worth
over \$3000
when you say
yes!*

**"The best way to tell
people about this unique
opportunity is with all
the information at your
fingertips!"**



As a distributor you automatically receive this handsome sales kit with every fact and figure you need to encourage others to take advantage of the same opportunity. The sales video featuring Robin Leach practically does the selling for you. The Flip Chart bullets essential points. The Portfolio of Savings provides elegant demonstration of the product values. We've even included a calculator, pad and pencils.

No Risk! Free 30-Day Trial

Call 1 (800) 380-2642

Operators are standing by 24 hours a day.

You earn even more when you opt for the best lead generation and sales support system in America...

...And, as part of it, you'll enjoy the advantage of the most aggressive and richest compensation plan in the Industry! Instead of a minimum of \$625 for each sale you make, you'll earn a guaranteed minimum of \$1,125 for each sale!

YOU WON'T FAIL...

...because direct marketing professionals will create and produce full-color mailing pieces, much like this one, and mail them on your behalf to 1,000 - 3,500 qualified leads (Amounts depend on which program level you choose). Telephone sales consultants will talk to respondents and close sales on your behalf. As a matter of fact, this brochure was mailed to you as part of the optional program. When you become a Fidelity distributor this sale will be credited to the distributor who sponsored this mailing.

HOW MUCH MORE MONEY WILL I EARN?

This is the only direct selling program that helps build your business with you. That means, at a

	Sold directly by you		Sold by the optional support staff (on your distributor's mailing)	Your Total Commissions
1-8 Front-line sales	\$ 625	plus	\$500	\$1,125
9+ Front-line sales	\$1,125	plus	\$500	\$1,625
1st 8 sales under each of your Front-line distributors.	\$ 500	or	\$500	\$ 500

- You earn \$1,125 for each of the first 8 sales you make yourself.
- You earn \$1,625 for each sale you make after the first 8.
- You earn \$500 for each of the first 8 sales of your Front-line distributors.

No Risk? None!

The optional lead generation and sales support program guarantees to continue sending mailings on your behalf - at no additional fee - until you have earned commissions equal to or exceeding your cost of the program.

minimum you'll earn \$500 more for each sale you make. But that's not all. If you need help getting started, the optional sales support program will "jump-start" your sales effort. That's correct. No matter how active you choose to be, they'll make sales on your behalf and you'll receive commissions on those sales! It's like having a 24 hour marketing and sales team working for you

without having the overhead. *Note:* The secret of earning substantial commissions is by making direct sales. As few as two three will exponentially increase your network by adding thousands of mailings capable bringing you vastly increased earnings. (Remember each new sale generates another 1,000 - 3,500 mailings that will potentially pay residual income to you



Distributors agree:

"Using the optional program makes all the difference in the world!"

For this unlimited earning opportunity call now

Call 1 (800) 380-264

Operators are standing by 24 hours a day

2500.00
2500.00
2500.00
BEST COPY AVAILABLE

THE PROGRAM ALL OF A
IS TALKING ABOUT

GREAT SAVINGS PLUS MAJOR EARNINGS POTENTIAL

As a distributor you will receive your bound Portfolio of Savings in an elegant attache case designed for use as a sales presentation kit. It contains everything you need to make a sale including a sales video featuring Robin Leach.

*Every time you
make a sale...
every time you share
your opportunity
with others...
you'll immediately
earn at least \$625
and up to \$1,500!
We think you'll agree
that this is
an extraordinary
compensation plan.
And with Fidelity
this is only
the beginning!*

But you won't really be "making" a sale. The package is so impressive that you'll naturally want to show it to your friends. When you share the information with others, the benefits of the product will become apparent. Isn't that what the best network marketing is really all about, finding a

product that satisfies you and passing the opportunity along to others?

GRAB THE GOLD RING AND GUARANTEE YOUR SUCCESS!

So many network marketing companies promise financial success. But if you're like the majority, you'll fail. Why? Because most people don't know how to sell beyond the comfort zone of family and friends. That's why we developed the optional lead generation and sales support program – a program unparalleled in the industry – one that prevents you from failing. Direct marketing professionals will design, produce and mail brochures, much like this, on your behalf. Telephone sales consultants will respond to calls and close respondents for you. The optional support program guarantees: "You won't lose a penny with this program!"

LIVE A LIFE OF CONFIDENCE AND OPTIMISM FOR YOUR FUTURE!

After you read this brochure we know that you'll be calling us. When you do it will be the first step to taking control of your finances and safeguarding your future. Our goal is to

- A product worth over \$25,000! Savings and Discounts on pure you make every day!
- The richest and most aggressive compensation plan in the industry
- An unparalleled optional lead generation and sales support
- The only program that assures that every one of your front line sales comes with a built-in down (with the optional marketing program)
- Save many times the cost of the program as you buy groceries, electronics, medicines, airline and much more!
- Save and earn thousands of dollars with No-Risk of failure - GUARANTEED
- Have direct marketing professionals make sales on your behalf!
- Earn at least \$625 - \$1,500 on each sale you make.
- Receive luxury travel bonuses more than the cost of the program the instant you say, "Yes."

help you keep ahead of the financial pitfalls you may encounter. To the end we raise the Fidelity beacon to light your way to success and riches...and it's only a toll-free call away

**Learn more about the richest and most aggressive
compensation plan in the industry**

Call 1 (800) 380-264

Operators are standing by 24 hours a day

RECEIVED

JUL 31 1997

JACKSON & RICE

07/23/97

Alvin Funk
C/O 833 N.Main St.
Helena, MT 59601

FROM: Marco Carrion
Complaint Mediator

CASE #: 342991

RE: Fidelity Alliance Marketing Group, L.L.C.

Thank you for your letter. After reviewing it, we find that the issues raise are not within the scope of BBB activity. The Bureau does not:

- provide legal services or advice
- make collection of wages or debts
- handle employee/employer disputes
- handle tenant/landlord disputes
- handle any type of discrimination disputes
- intervene where a court has rendered a decision
- handle a complaint against a government agency
- handle complaints involving the competency of professionals, such as doctors or lawyers
- handle complaints against individuals
- handle cases that are currently in litigation
- handle disputes involving consequential damages

Since your complaint does involve one of the above issues, we are unable proceed any further.

The BBB does provide prepurchase information to inquirers; conducts mediation and arbitration of complaints on issues other than the above list.

However, we recommend you contact the following for assistance:

US District Court Bankruptcy Court - All NYS
One Bowling Green, 6th Fl.
New York, NY 10004

Bklyn, SI, Queens, Nassau, Suffolk: 718-330-2808, 75 Clinton Street,
Brooklyn, 11201 - Manhattan, Bronx: 212-668-2867

Mid-Hudson area:

Westchester County: (914) 682-6117--All other counties: (914) 452-4200
101 East Post Rd. PO Box 1000
White Plains, NY 10601 Poughkeepsie, NY 12602

** \$15 charge for information *****
Individuals or corporations file petitions for bankruptcy here. To obtain info about a company believed to have declared bankruptcy, go in person to the appropriate office or write--no phone inquiries accepted

Chairman Senator Hertle, members of the committee, my name is Betty Babcock, former legislator and a victim I am here to testify in support of SB27.

At the Senate hearing in 1997, I testified on SB136, with a great deal of soul searching and hesitation for I admitted I was a victim of Telemarketing Fraud. I did so for two reasons. First because I knew AARP was working on legislation and I wanted to see these criminals stopped I was willing to help. I also learned that Montana citizens are being targeted due to the weak telemarketing laws in our state and now we have the second highest per capita rate of calls to the National Fraud Information Center in the Nation.

Secondly, by my admitting publically that I was a victim, I hoped that others might be warned of what could happen to them and they would be encouraged to come forward, admit they too had been taken in by these high powered Con Artists, and wouldn't be afraid to report the crime to the authorities and ask for their help.. It is a devastating experience for many citizens and their families.

I was sadden by the failure and disappointed when SB136 was tabled but grateful when the Senate in their wisdom concurred that it was such an important issue that it should be studied in the interim.

Little did I know, that by admitting I was a victim of Fraud, what was ahead of me. I was determined to do all I could to stop theses Con Artist in their tracks. We don't need the likes of them hurting our Montana families.

I know how busy you are so I will briefly list what I have been asked to do since the last session.

You may find these packets are extensive but I have documented what has happened and highlighted information so you may have what ever you need to refer to on this issue at your finger tips.

Keep in mind, I did not solicit any of the requests for programs, appearances or publicity.

Section 6. of SB27 states : The department shall establish and administer a telemarketing fraud consumer awareness program.. I hope this will demonstrate what a serious problem telemarketing is our state. Our citizens are hungry for information and very much need your help..

*I was asked to present or participate in programs as follows*****

- * 1/3/97 for the Lewis and Clark Republican Women at Jorgenson's
- *. 2/11/97 Birthday Luncheon at the First Presbyterian Church.
- *. 2/13/97 General Federation of Women's Clubs at Jorgensons.
- * 4/ 28/97 for the Helena Kiwanis Clubs at Jorgensons
- *. 12/4/97 Forum on Fraud- "Victims' Voices" for the National Associations of Attorneys General and American Association of Retired People in Baltimore, Maryland. .
- *. 2/5/98 for "United Against Crime" Fort Worth, Texas
- *. 2/18/98 for AARP News Conference and "Fraud Fighting Training Session" for Volunteers in Washington, DC Ted Bobrow
- * 6/3/98 for The Dept. of Public Health and Human Services on KUSM, Public Television in Bozeman.
- * 10/16/98 for the MEA Conference in Great Falls at the CM Russell High School
Those who attended theses classes were given college credit.
- * 11/1/98 through 12/1/98 Intermittently statewide PSAS' with Auditor Mark O'Keefe on Fighting Fraud
- * 11/5/98 for the PEO at Lori Scars

- * 1/7/99 for the General Federated Women's Clubs at the Covenant Methodist Church.
- * AARP Action Team conducted Fraud Fighting training sessions in six towns.

I was interviewed by the Good Housekeeping Magazine, Women's Day, Wall Street Journal, the Independent Record and other publications. Copies are attached. Even though some of these appearances were out of state, the publicity given to this issue, did filter into Montana..

In your packet you will find a press release that I gave in Washington, DC that will explain briefly how I was scammed. There is also a copy of a partial report I gave to the FBI.

There is a letter of release that I was to sign and send back for a 10 karat diamond and sapphire bracelet. This was represented as a \$2500.00 prize. The one on the table was listed as a numbered Bronze piece of Art and if you look closely you will see it is plaster of Paris.

Telemarketers are deceitful, and the worst kind of Criminals Last but not least there is a list of resources, agencies, phone numbers and address's where your constituents may get help

One point should be made clear. As long as there is trade and commerce, there will be Con Artists looking for seniors to victimize. The question is not will you be approached by a Con Artist, but when? Remember anyone can be a victim of Telemarketing Fraud. It could happen to someone you love in your family.

We need to strengthen the laws of Montana on Telemarketing Fraud

Members of AARP, their associates and staff and volunteers have worked very hard and so have I for we don't want to see our citizens the victims of these criminals any longer.

The first step in the right direction is to Pass SB27. I urge you to do so and "THANK YOU

MOST SINCERELY FOR ALL YOUR HARD WORK.

***COMMENTS BY BETTY BABCOCK OF HELENA,
MONTANA, FORMER STATE LEGISLATOR AND FIRST
LADY OF MONTANA AND TELEMARKETING FRAUD
VICTIM ON FEBRUARY 18TH, 1998 WASHINGTON D.C.***

Good Morning! My name is Betty Babcock and I am delighted to be here. I know how easy it is to become the victim of fraudulent telemarketers because it happened to me. I live in Helena, Montana and I served in the Montana state Legislature in the 1970's. My husband was governor of the state from 1962 TO 1969.

In the early 1990's I began responding to sweepstake offers that came in the mail. I considered them harmless and I thought about how wonderful it would be to win something. Soon the calls started coming, promising that I was a winner. The prizes varied from small appliances such as televisions to exotic vacations or even 10,000 in cash.

Usually, I was told that I had to buy something or send money, in order to qualify. I fell for a variety of these scams progressing to the point where I was contacted by Ron Ross, a vice president with PMI, a telemarketing firm based in Roswell, Georgia. He told me that I was the top VIP winner in the state and that I had won a Lincoln Town Car. I could either come to Georgia to pick up the car or it could be delivered to me, if I paid \$5000.00 in taxes.

At first, after talking with my husband and our attorney I

didn't send my money. But before long I received a call from the Ron Ross again notifying me that I was on the verge of losing out on the whole deal. He convinced me that I could still get the car if I paid \$2500.00 in taxes immediately and the rest when they delivered the car.

In spite of lots of good advice, I sent him the money. I was thoroughly convinced that I had won. Of course, I never heard from anyone from PMI again. Ross stopped returning my calls and all I received from Georgia was a box with a couple of bottles of vitamins.

I did report this to the FBI, Citizens Advocate, and many appropriate offices in Georgia and Montana.

Before long the calls started again, this time from a company promising to help me recover my money if I gave them an up-front retainer. This time I didn't fall for it.

When I heard that AARP was working to pass stronger protections from telemarketing fraud for consumers in Montana, I wanted to help. I have testified at hearings back home and I have been letting people know about my experience because I think it can help prevent this from happening to others.

Needless to say I have learned my lesson. It has not been easy for me to come forward and talk about how I was scammed by a fraudulent telemarketer. But it's important for everyone to realize that this could happen to them or

someone they love.

We all need to realize that you aren't necessarily safe from criminals even in your own homes. Fraudulent telemarketers are criminals and people need to end those calls and not fall for their telephone line.

Thank you for giving me the opportunity to tell my story. Please be careful that you don't become a victim of telemarketing fraud.

This is a copy of a partial report made to the FBI by Betty Babcock in 1993 in regard to Telemarketing Fraud.

RON ROSS
VICE PRESIDENT OF PMI
10800 ALPHARETTA HIGHWAY
SUITE # 515
ROSWELL, GEORGIA

1. 1992 LINCOLN TOWN CAR (\$32,000.00)
2. 3# GOLD
3. \$15,000.00 CASH
4. \$10,000.00 CASH

Ron Ross told me that I was the National VIP winner. That there was no one competing with me. Their Board of Directors had met and that I was chosen. The car was to be presented to me sometime between January 20th and January 29th, 1993. They would be sending me an airline ticket, pay the hotel and all the expenses. Would I mind having my picture taken with the car to be used in 200,000 brochures. I would of course have to drive the car from Roswell, Georgia to Montana. I didn't have to make up my mind that minute for if I chose he would come with his secretary and they would plan a ceremony here through the local Ford Dealer. If I chose to do that it would be between February 1st and the 10th.

At one point he even spoke to my husband. So I felt certain all was legitimate then. However my husband was skeptical and so were my children.

I believe it was about the 6th of January I received a phone call asking me if I understood I had to pay taxes on the car. This took me by surprise, but I said I supposed that probably was customary. They wanted me to send them \$5000.00. I was beginning to have some doubts but I still thought I was going to get the car. Ron Ross said for me to send the money by Federal Express. I didn't send it and I thought the whole deal was off. I even tried checking on the company but didn't have much luck doing that. My husband advised me to call my attorney. I did and the attorney advised me not to pay the taxes.

In about three days Ron Ross called me back very upset that I hadn't sent the money. We had a big snow storm at the time and I was extremely busy and I told him I had made some phone calls and I didn't think I should pay the taxes until I received the car. Needless to say there was another very high powered sales pitch. He said I probably ruined the whole thing but he might still be able to get all the paper work done in time for the ceremony. Would I be willing to pay half of the taxes and the other half when they delivered the car. I agreed to do that and the Federal Express came again with their prepaid envelope, so I wouldn't have any expense.

The last thing I received from them was a Federal Express box about 12 inches square and 3 inches deep. I thought this must contain the notice and all the papers they said I was to receive. It had an envelope saying the MAJOR AWARD would be made after February 1st. Nothing

with my name on it. A copy of this is attached. There were also four bottles of vitamins.

When I didn't hear from them I called their 800 number. It was always busy but a recording would say to leave a message. Two days later in the mail I received a notice to write them if I was unable to get through on their phone line. I called again and gave Ron Ross's name and extension and said if I didn't hear from him he would hear from my attorney. The next day a lady called and said she didn't understand the message but that she was the president's secretary and could she help me. I told her I hadn't received any papers from Ron Ross and that we were going on vacation and I wanted to be sure I was available to make the arrangements with him about the car. I had sent half of the taxes as he had requested. She apologized and said Mr. Ross had a family emergency. When was I leaving on vacation and I said the 21st of February. She said everything would be taken care of by then. So once again I thought everything was legitimate.

About a week later I was called again, and someone from the same company offering me a Mercedes or would I be willing to take \$50,00.00 in cash. I told them I hadn't received the Black Lincoln yet. They put me on hold while they talked to President. They didn't ever come back on the line. I didn't hear from them after that. I knew then I had been had.

Following are numbers I located to try and check on these people but I didn't have any positive results through any of them.

National Fraud Service 800-876-7060
I think they said to send a certified letter.

Georgia Consumer Affairs Office:
404-615-8600

Atlanta Better Business Bureau
404-688-4910 (called) Received a recorded message.

Fulton County Courthouse
Business License Section 404-572-3226

Georgia Consumer Affairs Office
Olaf Thomas 404-651-8600

IRS 1-800-829-1040

RONALD ROSS
VICE PRESIDENT PMI
10800 ALPHARETTA HIGHWAY
SUITE 515
ROSWELL, GEORGIA

TOLL FREE 1-800-756-2042

1. 92 LINCOLN TOWN CAR

He asked me what color? I told him Black.

2. \$1000.00 SEARS GIFT CERTIFICATE.

He asked me if there was a Sears Store in this town? I told him yes.

FEDERAL EXPRESS NUMBER 161878537

I was to put the check in a white envelope addressed:
PMI, RON ROSS, DEPARTMENT 2
VICE PRESIDENT OF SALES AND PROMOTIONS.

MR. PHILLIP M GADD
FEDERAL BUREAU OF INVESTIGATION
ARCADE BUILDING, 111 NORTH LAST CHANCE GULCH
P.O. BOX 1706
HELENA, MT 59601
406-443-3617

UNITED AGAINST CRIME PARTNERS

®RADIOSHACK

NATIONAL SHERIFFS' ASSOCIATION

NATIONAL CRIME PREVENTION COUNCIL

PRESENTERS

Mr. Doug Shadel, Reg. Consumer Affairs Rep. of AARP
9750 3rd Ave NE Ste 400
Seattle WA 98115
Ph: 206-517-2316

The Honorable James E. Doyle, Attorney General
Office of the Attorney General
114 E State Capitol
Madison WI 53702
Ph: 608-266-1221

Sheriff Robert J. (Bob) Garvey
Hampshire County Sheriff's office
205 Rocky Hill Rd.
Northampton MA 01060
Ph: 413-584-5911

Mr. Timothy J. Healy, SSA
Program Mgr. of the National Telemarketing Initiative for the FBI
95 Pennsylvania Ave NW Room 3634
Washington DC 20535
Ph: 202-324-9232

Mrs. Betty Babcock
Telemarketing Crime Prevention Advocate
1625 Highland
Helena MT 59601
Ph: 406-442-5611

RESOURCE AGENCIES

Consumers who want to have their names removed from any national telephone solicitation lists should write to:

DMA Telephone Preference Service
P. O. Box 9014
Farmingdale NY 11735-9014

Mail Preference Service
P. O. Box 9008
Farmingdale NY 11735

Will remove your name from most national mailing lists. Send your name and address including apartment number and zip code. It takes about 4 months to see a reduction in mail received.

National

National Consumers League
1701 K Street, NW Suite 1200
Washington DC 20006
Ph: 202-835-3323

AARP
601 E Street NW
Washington DC 20049
Ph: 1-800-424-3410

National Association for rights of elderly people, has local chapters that deal with many issues and resources involving financial advice including financial information programs which offer workshops on taking charge of your own finances, tax preparation assistance, legal counseling, that can include volunteer programs that help courts monitor guardianships, assistance in locating jobs, and retirement programs.

Federal Trade Commission (FTC)
Bureau of Consumer Protection
6th and Pennsylvania Ave NW
Washington DC 20580
Ph: 202-326-2222

Bureau of Consumer Protection has information for consumers on ways to avoid consumer fraud, including telemarketing.

The United States Postal Inspection Service

Congressional & Public Affairs Division

475 L'Enfant Plaza SW

Washington DC 20260

Ph: 202-268-2000

National Fraud Information Center

1-800-876-7060

Online: <http://www.fraud.org>

A nonprofit organization which helps consumers report fraud and which offers helpful advice on how to avoid becoming a victim. Incident reports are entered in a database which is electronically referred to the National Electronic Fraud Database administered by the Federal Trade Commission and the National Association of Attorney Generals.

Such reports are also forwarded to a variety of federal and state regulatory and criminal investigative agencies.

Consumer Action

Phone: 415-777-9635

Nonprofit consumer education and advocacy agency that publishes national and state of California consumer information on telephone, banking and other consumer issues *in several languages*.

Operation Restore Trust

Phone: 800-HHS-TIPS

A Federal Department of Health and Social Services pilot program aimed at reducing Medicaid and Medicare fraud and abuse in New York, Florida, Illinois, Texas and California. Hotline allows both beneficiaries and providers can report fraud and abuse, such as when a provider knowingly lies to get paid for services, or change descriptions of care to get paid more. Abuse occurs whenever Medicare or Medicaid pays for items or services which are medically unnecessary, performed incompetently, or priced unfairly.

National Association of Securities Dealers Inc.

NASD and state regulators Hotline

1-800-289-9999

Consumers will be able to contact hotline to learn if there are pending customer complaints against stockbrokers. Also has website where customers can electronically file complaints about brokers or firms.

Legal Services Corp.

Ph: 202-336-8800

National contact which can profile names of free and low cost legal aid groups in our communities, which may provide services to low income or elderly consumers.

State

AARP Northeast Region Consumer Representative (CT, DE, ME, MA, NH, NJ, NY, PA, RI, VT)

One Boston Place Suite 1900
Boston MA 02108
Ph: 617-723-7600
Fax: 617-305-0444

AARP Southeast Region Consumer Representative (AL, DC, FL, GA, KY, MD, MS, NC, PR, SC, TN, WV, VA, VT)

999 Peachtree St NE Suite 1650
Atlanta GA 30309
Ph: 404-888-0077
Fax: 404-888-0902

AARP Midwest Region Consumer Representative (IA, IL, IN, MI, MN, OH, ND, NE, SD, WI)

8750 W Bryn Mawr Ave Suite 600
Chicago IL 60631
Ph: 773-714-9800
Fax: 773-714-9927

AARP Southwest Region Consumer Representative (AZ, AR, CO, KS, LA, MO, NM, OK, TX, UT)

8144 Walnut Hill Lane Suite 700 LB-39
Dallas TX 75231-4316
Ph: 214-265-4060
Fax: 214-265-4061

AARP West Region Consumer Representative (AK, CA, GU, HI, ID, MT, NV, OR, WA, WY)

9750 Third Ave NE Suite 400
Seattle WA 98115
Ph: 206-526-7918
Fax: 206-523-8138

State Attorney General of each state
Telephone number in government pages of directory

Local

Local consumer affairs departments

DRAFT**DRAFT****MAZUREK, MONTANA AARP PRESIDENT ATTEND FRAUD FORUM**

HELENA -- Attorney General Joe Mazurek and Fred Patten, president of the Montana chapter of the American Association of Retired Persons, will attend a national telemarketing fraud forum this week in Baltimore that also features former Montana First Lady Betty Babcock.

Babcock is scheduled to be one of three people who will discuss how they were swindled by fraudulent telemarketers.

The Thursday forum, "Victims' Voices," is sponsored by the National Association of Attorneys General (NAAG) and the AARP to focus attention on scams that target the elderly. The forum is being held in conjunction with NAAG's winter meeting in Annapolis.

"This forum will be a good reminder to all of us that some criminals will stoop to anything to steal a dollar," Mazurek said. "And during the holiday season, it's especially important that people take care so they don't fall victim to bogus telephone solicitors."

A key feature of the forum will be a discussion by fraud victims and their families.

Babcock will discuss her experience with a telephone salesman who convinced her to pay \$2,500 in taxes for a "free" Lincoln Town Car she was told she had won. The taxes were to be paid in advance of receiving the car. Once she sent the money, she didn't hear about the car again.

Babcock told her story to a Montana legislative committee earlier this year, when lawmakers were considering a bill to regulate telephone solicitation in Montana. While the bill failed, efforts are underway to revise the proposal and bring it to the 1999 Legislature.

"I think it's important that we do what we can to protect Montana consumers from fraud

in a way that will still allow legitimate telemarketers to conduct business," Babcock said, adding that she hopes to help educate others about telemarketing fraud by discussing her experience.

Mazurek noted that Congress has estimated that Americans lose \$40 billion each year to fraudulent telephone solicitations.

"Their business is cheating consumers, and they do it well," he said.

Other panels at the Thursday forum will focus on tactics scam artists use to defraud people and on various law enforcement and educational efforts to combat fraud. NAAG plans to use materials from the forum to develop a video for group presentations and a guide for law enforcement officers.

"I'm pleased my office will have the chance to aid in fraud-fighting efforts by distributing any materials that are developed from this forum," he added.

Mazurek and Patten offered several tips for dealing with telephone solicitors:

- Beware of any phone solicitor who asks you to send money or buy anything sight unseen, unless you know who initiated the call.
- Never provide your credit card number or bank account number to a caller you don't know.
- Don't pay anything for a "free prize" offered over the phone.
- Don't be rushed into anything. Reputable businesses and charities will allow you time to think over their offers and will be willing to send you written materials.

#

(This news release is available electronically in the MT-AG folder of International News Net and in the Attorney General's Office area of the Department of Justice section on the state bulletin board.)

United Against Crime

December 10, 1997

Betty Babcock
1625 Highland
Helena, MT 59601

Dear Mrs. Babcock,

On behalf of United Against Crime - a cooperation among the National Crime Prevention Council, the National Sheriffs' Association and RadioShack, - I would like to invite you to be a panelist on a live national teleconference, *Telemarketing Fraud Prevention*, for a national community-based training Thursday, February 5, 1998.

The National Crime Prevention Council, in conjunction with our United Against Crime partners, has for the last three years conducted quarterly crime prevention training sessions via 150+ satellite training rooms. The program will last two hours and can be viewed across the country in RadioShack training rooms or via the Law Enforcement Television Network (LETN). The training sessions are fully interactive between the viewing audience and the speakers. A live question and answer session allows any viewer to speak directly with any of the panelists through our two-way audio hook up.

We have also invited Doug Shadel, Consumer Affairs-American Association of Retired Persons (AARP), Attorney General James Doyle, and Helen Boosalis, President, AARP, to participate on the distinguished panel.

RadioShack is responsible for any payments, including the purchasing of satellite time, distribution of training materials, transportation and lodging, and meals. RadioShack will, at no time, make any reference to products or services offered in their stores. These sessions are strictly for training and are available to participants free of charge. I have enclosed a tape for your review to give you a better understanding of how the program will unfold.

We would like to ask you to be available for conference calls that would assist in planning a flawless training session. You would then need to be in Ft. Worth, TX the day prior to the event (usually ½ day will suffice) for rehearsal, and the day of the event. We are tentatively designating Thursday, February 5th, as our training date.



National Crime
Prevention Council

RadioShackSM



National Sheriffs'
Association

We are extremely excited about the use of this technology in training law enforcement and community members and look forward to the program dealing with telemarketing fraud. Should you have any questions, please do not hesitate to call me. I will be happy to furnish you with any further information you may need in making your decision.

Please confirm your participation with Leah King of RadioShack. She has been designated, by the management of RadioShack, to act as the full time manager of the United Against Crime program. She can be reached at 817-415-6707, via fax at 817-415-8176, or e-mail lking1@tandy.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "John A. Calhoun".

John A. Calhoun
Executive Director
National Crime Prevention Council

enclosures

United Against Crime

Contact: Leah King
RadioShack
817-415-8707

Faye Warren
NCPC
202-466-6272 ext. 126

Priscilla Stogenga
NSA
703-836-7827

FOR IMMEDIATE RELEASE

January 27, 1998

TELEMARKETING FRAUD: DON'T LET IT HAPPEN TO YOU

United Against Crime Satellite Broadcast Highlights Prevention Techniques For Senior Citizens

Fort Worth, Texas – United Against Crime (UAC), a public/private crime prevention
agency, is offering a free nationwide satellite teleconference on crime prevention strategies to
law enforcement officers, government officials, school administrators and community volunteers
across the U.S. The UAC satellite network is sponsored by RadioShack, the National Crime
Prevention Council (NCPC) and the National Sheriffs' Association (NSA).

The program, entitled "*Telemarketing Fraud: Don't Let It Happen To You*," will be held
from 11 a.m. to 1 p.m. (CST), Thursday, Feb. 5. The broadcast will originate from the Tarrant
County Convention Center, Fort Worth. It can be seen at more than 150 RadioShack district
offices across the U.S. It will also be simulcast on the Law Enforcement Television Network,
a satellite network dedicated exclusively to the law enforcement community.

The program, spearheaded by the American Association of Retired Persons (AARP),
will explore a variety of issues including the impact of telemarketing fraud, prevention strategies,
especially for senior citizens, and how to serve as a resource for victims of telemarketing fraud.

The UAC broadcast will feature a panel discussion led by Doug Shadel, regional
consumer affairs representative, AARP. Other panelists include: The Honorable James E.
Leahy, attorney general, state of Wisconsin; Robert J. Garvey, sheriff, Hampshire County,
Mass.; Timothy J. Healy, supervisory specialist agent and program manager for the National
Telemarketing Initiative, Federal Bureau of Investigation, Washington, D.C.; and Betty Babcock,
former first lady of Montana, and a victim of telemarketing fraud, Helena, Mont.

more –



RadioShack..



United Against Crime Satellite Training
Page Two

UAC was formed in 1994 by RadioShack, NCPC and the NSA. Since 1994, **UAC** has distributed more than 10 million pieces of crime prevention literature and hosted quarterly training sessions on a wide variety of crime prevention issues. Local government officials, community volunteers and law enforcement personnel are invited to training sites through local coordinators and the efforts of NCPC and NSA.

Complimentary videotapes of previous **UAC** satellite broadcasts are available by calling toll-free 1-800-858-8557.

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<http://www.unitedagainst.com>

RadioShack is a registered service mark used by Tandy Corporation.



February 17, 1998

Mrs. Betty Babcock
c/o Hyatt Regency
Fax: 737-5773

Dear Betty:

Welcome to Washington! I hope that you had a pleasant flight.

I have asked Pearl Sauls to meet you at the front desk of your hotel at 9 a.m. tomorrow morning to bring you over to AARP's headquarters. She will be holding the yellow AARP Telemarketing Fraud folder so you can recognize her.

Once again, thanks for agreeing to participate in tomorrow's event. A fraud fighter training will begin at 9:30 and the news conference will begin at 11. AARP President Margaret Dixon will open the news conference and introduce you and FBI Agent Tim Healy.

We will have some time before the news conference to go over the logistics. A reporter with Medill News Service who writes for papers in Montana has already expressed an interest in speaking with you.

Let me know if you have any questions. Call me at the office (202) 434-2573 or at home (301) 439-4839.

Sincerely,

A handwritten signature in cursive script that reads "Ted Bobrow".

Ted Bobrow
Media Relations Specialist

Fraudulent Telemarketers are Criminals. Don't Fall for a Telephone Line.

**FOR IMMEDIATE RELEASE
February 18, 1998**

**CONTACT: Ted Bobrow
Greg Marchildon
(202) 434-2560**

AARP TAKES FIGHT AGAINST TELEMARKETING FRAUD TO NEW LEVEL

New Efforts Designed to Help People End Unwanted Calls

Washington, D.C. — AARP today is turning up the heat on fraudulent telemarketers in an effort designed to help people end unwanted calls. Thousands of volunteer "fraud-fighters" will be trained to go into communities to arm their fellow citizens with the tools they need to combat fraudulent telemarketers. New television, radio and print public service announcements (PSAs) will be promoted coast-to-coast, and unique user-friendly materials will be distributed alerting people that "Fraudulent Telemarketers are Criminals" and "Plan in Advance For the Criminal Call."

"A fraudulent telemarketer convinced me that I was going to win a fancy car as long as I sent him money first to cover taxes," said Betty Babcock, a former legislator and governor's wife of Helena, Montana. "My experience motivated me to help get the message out to others to prevent this from happening to them."

Extensive research conducted by AARP has indicated that people who fall victim to con artists often don't recognize that fraudulent telemarketers are criminals and have difficulty getting off the phone. AARP, with the help of the FBI, other law enforcement agencies and hundreds of volunteers, including victims of telemarketing fraud, will work to get the message out to a broad cross-section of the American public.

Americans lose an estimated \$40 billion a year to telemarketing fraud and older people are disproportionately targeted. Scams often involve phony prizes or sweepstakes, fake charities, investment fraud or recovery schemes which charge a fee to get back money already lost.

--- more ---

AARP
American Association of Retired Persons

AARP/Telemarketing Fraud
February 18, 1998 - Page 2

New materials today unveiled by AARP include:

- Fraud fighter training: training materials include a kit with a video with interviews with victims, law enforcement officials and a convicted fraudulent telemarketer
- Public Service Announcements - (video, radio and print): Television PSAs feature the voice of actor/comedian Tim Conway as "Timothy the Telephone"
- Fact sheets, brochures and other consumer material in English and Spanish

"Fraudulent telemarketers must not be allowed to deprive their victims of their economic security," said AARP President Margaret Dixon. "The best way to fight this crime is to help people protect themselves from becoming victims in the first place."

AARP has supported the efforts of law enforcement agencies to crack down on fraudulent telemarketers and is also working to promote stronger legislation to help protect consumers. Four states recently passed telemarketing fraud legislation and bills are under consideration in 15 additional states. But experts agree that public education is critically important to fight this crime.

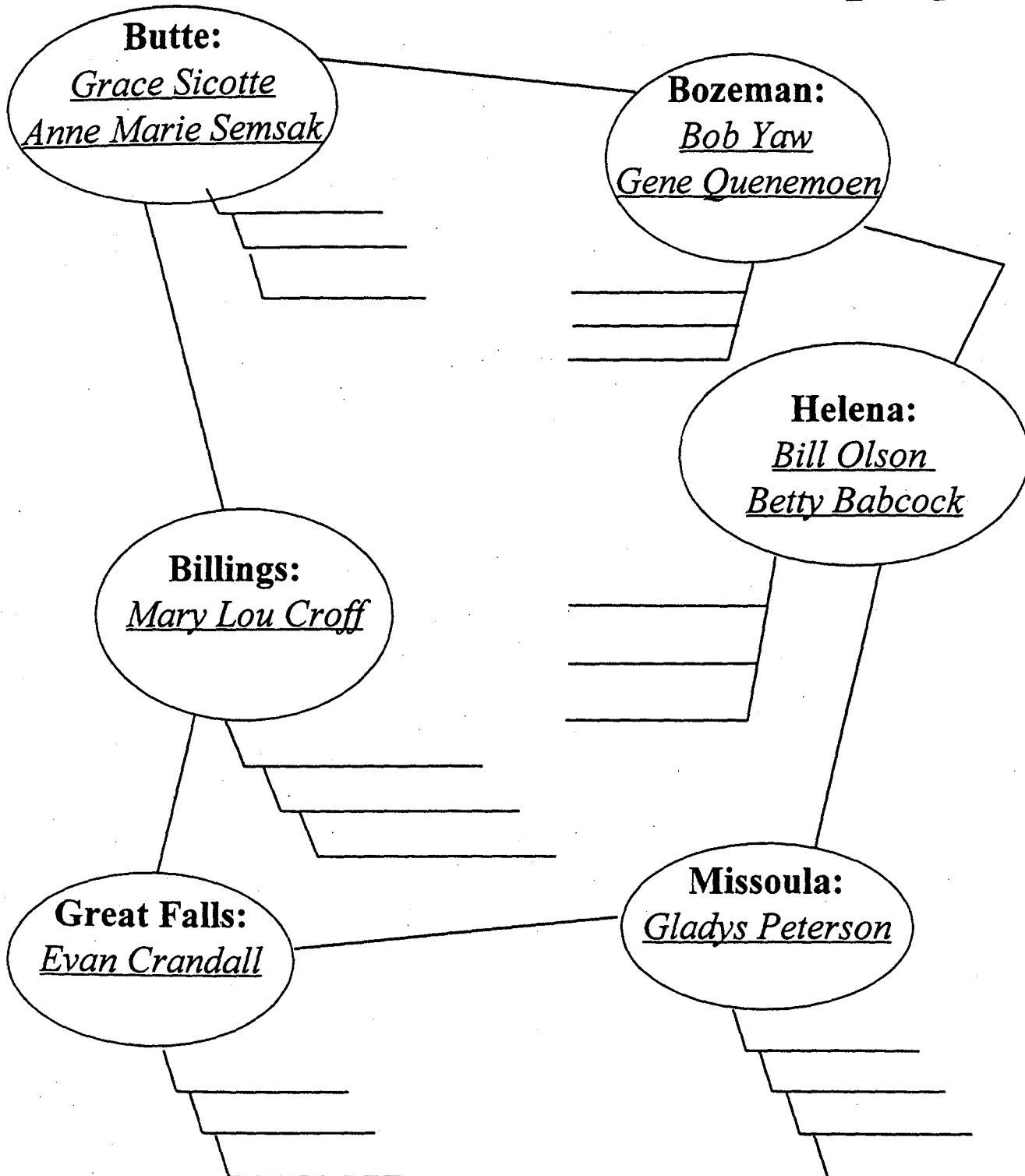
"I have seen the devastating impact this crime can have on its victims," said Federal Bureau of Investigation Special Supervisory Agent Timothy Healy. "The nation's law enforcement community is aggressively working to identify and prosecute these criminals but our greatest wish would be to stop the crime before it happens."

AARP research also indicates that the typical victim of telemarketing fraud doesn't fit the stereotype of a frail, isolated older person. Many victims are well-educated and socially active men and women, and are often just as suspicious of fraudulent telemarketers as non-victims.

AARP is the nation's leading organization for people 50 and older. It serves their needs and interests through research, advocacy, informative programs and community services provided by a network of local chapters and experienced volunteers throughout the country. The organization offers members a wide range of special benefits, including Modern Maturity and the monthly Bulletin.

###

MT Telemarketing Fraud Campaign



Members of the Montana Telemarketing Fraud Action Team:

Betty Babcock, Evan Crandall, Mary Lou Croff, June O'Connor, Bill Olson,
Gladys Peterson, Anne Marie Semsak, Grace Sicotte, Rene Worley

Staff Leads: Lois Smith, Doug Shadel

MONTANA

Telemarketing Fraud Action Team Members

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DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



MARC RACICOT
GOVERNOR

LAURIE EKANGER
DIRECTOR

STATE OF MONTANA

PHONE: (406) 444-4077

SENIOR & LONG TERM CARE DIVISION
PO BOX 4210
HELENA, MT 59604-4210

June 3, 1998

Mrs. Betty Babcock
1625 Highland
Helena, MT 59601

Dear Mrs. Babcock,

I wanted to thank you for taking the time out of your busy schedule to participate in the May 26th KUSM Town Meeting Show "Fraud and Legal Issues". I am very pleased to tell you that as a direct result of the program I have sent 53 packets of information to our viewers to date. The purpose of these programs is to educate Montana's elderly and their families about issues that effect seniors so that they may have a better quality of life. Your participation in the program was a great example that fraud can happen to anyone. We really appreciate your sharing your story with our audience.

I have enclosed a copy of the program for your use. You had mentioned that you have a group of people that you work with on fraud issues. We do a short program called Aging Horizon's here in Helena that is on TCI cable that might be a good way to get any information out for your group. If you are interested call Brian LaMoure at 444-7782.

Once more, thank you for your help and if I can be of any assistance to you do not hesitate to call me at 444-7784.

Sincerely,

A handwritten signature in cursive script that reads "Debbie Horton".

Debbie Horton
Associate Producer

DEAR ABBY

Law hangs up on phone fraud

DEAR ABBY: When I read the letter from "Lost in the Desert," the elderly woman who had been taken to the cleaners by slick telemarketers and was afraid to tell her husband, I was saddened. I would like to offer her, and others like her, some hope.

I recently attended the National Association of Attorneys General (NAAG) Winter Meeting, which had as one of its themes, "Educating Elder Consumers About the Dangers of Telemarketing Fraud: Don't Fall for a Telephone Line."

Attorneys general throughout the country are aware of the problem and have worked together to convict fraudulent telemarketers. NAAG was one of the moving forces behind the recent passage of a federal law that allows states to prosecute telemarketers who call across state lines.

The New Mexico attorney general's office, like many other state's attorneys' offices, has a Consumer Protection Division that can use the force of the law to recover the money gained through deceptive telemarketing scams. Our own office, in a state with a population of about 1.5 million, has recovered hundreds of thousands of dollars for victims of telemarketing scams.

People who have been taken advantage of by telemarketers should contact their state attorney general's office to find out where they can go for recourse. I would also like to encourage them to remember that it's never too late to be a savvy consumer. — TOM UDALL, ATTORNEY GENERAL, STATE OF NEW MEXICO

DEAR MR. ATTORNEY GENERAL: Thank you for some very useful information. I'm sure it will be of interest to many readers to know that they have recourse if they have been taken advantage of by unscrupulous telemarketers.

DEAR ABBY: This letter is in response to "Need-

ing More in Minneapolis," who wrote concerning a new man in her life who apparently has all the qualities she desires except that he is a "lousy lover."

I would like to know the definition of a lousy lover. Does it involve physical attributes, technique, holding and caressing, or other things perhaps better left unmentioned in polite circles? I realize that beauty lies in the eyes of the beholder, but does the definition of a lousy lover lie in the mind of the recipient? Most women I ask about this subject politely avoid answering the question, but I'm sure it is a frequent topic of conversation during "girl talk."

Abby, please ask your female readers to respond to this subject. Perhaps their responses can be reduced to a definition of what a lousy (or great) lover really is. I'm sure that many men who read your column will benefit from their responses. — EDWARD G. GRIER JR., SAN DIEGO

DEAR MR. GRIER: I can't speak for my female readers, but my definition of a lousy lover (male or female) would be one who is hurried, selfish and inconsiderate. Readers?

DEAR ABBY: I enjoyed your recent column from "No Name or Town, Please" concerning his talkative wife and her friend.

It reminded me of the story about a man who had not spoken to his wife in 12 years. Finally, a friend asked him why.

He replied, "Because I hate to interrupt people." — DICK QUINN IN LA JOLLA, CALIF.

For everything you need to know about wedding planning, order "How to Have a Lovely Wedding." Send a business-sized, self-addressed envelope, plus check or money order for \$3.95 (\$4.50 in Canada) to: Dear Abby, Wedding Booklet, P.O. Box 447, Mount Morris, Ill. 61054-0447. (Postage is included.)

One Woman's Hard Lesson

Betty Babcock is no babe in the woods; she's a former Montana state representative and the wife of a former governor. And yet, Babcock, 75, began filling out sweepstakes offers that arrived in her mail in the early 1990's. "I just thought it would be a thrill to win something," she says.

What Babcock was entering is known as "one in four" contests. After mailing in a sweepstakes card, she received postcards with an 800 number to call to claim a prize, or direct calls from telemarketers saying she was a guaranteed winner of one of four prizes. The initial prizes were often modest, such as a portable television. But during those calls, Babcock would learn that she had been selected to enter the next round, which included prizes like an exotic vacation or \$10,000 in cash. All she had to do was purchase a promotional product, such as vitamins, for about \$400.

"I suppose I knew there was a chance I wouldn't win, but I never felt like I was gambling," says Babcock. "They would tell you the names of other people who had already won and make it sound like I was the only one who hadn't claimed a prize."

For two years, Babcock listened to dozens of pitches, investing a few hundred dollars at a time. Eventually, she spent thousands. On occasion she did win something minor. Yet it was enough to keep her hopes

up. "The prizes they promise are always big enough that if you won any one of them you could pay yourself back for what you lost," she says.

In late 1992, Babcock thought she had finally hit the jackpot. Ron Ross, a vice president with PMI, a now-defunct telemarketing firm in Roswell, GA, told Babcock she was the national VIP winner of a 1992 Lincoln. Ross said the winner's ceremony would be held in Georgia.

A few days later, Ross called back and asked Babcock to pre-



"I just thought it would be a thrill to win something,"

*Betty Babcock,
former state representative*

pay \$5,000 in taxes. Her husband and lawyer advised her not to, but after speaking to Ross again, Babcock agreed to send \$2,500 in advance and make the final payment at the award ceremony.

An overnight courier arrived to pick up Babcock's check. (At the time, telemarketers used UPS and other private courier services because federal mail fraud statutes covered only the United States Postal Service. But in 1994, the law was expanded to include commercial carriers, too, thereby allowing judges to tack up to 15 years on sentences for those targeting seniors.) Ross said that Babcock

would receive her official winner's notification in the mail by February 1, 1993. Later that month, a package arrived from Georgia containing two bottles of vitamins. And PMI had already cashed Babcock's check. Outraged, Babcock called Ross, but says she was told he was unavailable because of a family emergency.

Babcock never heard from Ross again. A few weeks later, however, new telemarketers contacted her and promised to get her money back if she paid them a retainer of several thousand dollars. These telemarketers—called reloaders in

the industry—purchase mailing lists of victims like Babcock, and prey on those who are desperate to recover their lost funds.

This time, Babcock didn't fall for the scam. Instead, she filed a complaint with the Montana Consumer Advocate and the FBI. Although PMI is now closed, no employees have been arrested or indicted, and the investigation has reached a dead end.

Today, Babcock is lobbying the Montana legislature for a bill that would require telemarketers calling into Montana to post a substantial cash bond before being allowed to do business in the state. But the bill was tabled at the end of the last legislative session. It won't come up again for a vote until 1999.

up again. "I have never met anyone who lost something in the one-thousand- to two-thousand-dollar range," says Shadel. "They either learn their lesson after the first scam, or they get hooked and lose thousands." Bob Brammer, spokesperson for the Iowa Attorney General's office, is aware of more than a dozen senior Iowans who were scammed for more than \$50,000, and one woman who was taken for nearly \$600,000.

Indeed, almost no one ever wins big in a fraudulent telemarketing scheme. In congressional testimony, Gould described the prizes his Las Vegas companies gave away to people who had paid him thousands of dollars in the belief that they were guaranteed winners of the big prize. The exotic Hawaiian vacation was actually three days, midweek, off-season, in the cheapest accommodations available. The 21-foot luxury boat was in reality a two-person rubber boat without a motor. Occasionally, Gould's firm did award an automobile, but only after a mooch had paid out at least \$75,000. And what Gould gave away were vehicles he had purchased from auto brokers who deal in "lemons."

In conversations recorded by undercover FBI agents, telemarketers even brag about ripping off victims. "I just lawn-mower over these people," says

adults living in Bellevue, WA, who have at least \$50,000 in savings.

Someone pitching a sweepstakes can purchase the same lists. For instance, a company might do a bulk mailing asking recipients to fill out an easy crossword puzzle and send in \$3 to enter a drawing. Friel found hundreds of entries for \$3 and \$5 in her aunt's check register totaling \$3,000 in entry fees alone. Anyone who responds receives a follow-up call.

In addition, telemarketers build their own "lead lists." If you've ever filled out a postcard at the mall to win a new car,

you've probably provided a lead to a telemarketer. The postcards are used to create "sucker lists" or "mooch lists." Anyone who has fallen for a telemarketer's pitch is a "mooch," slang for *muchier*, an Old French word that means "to hide or lurk." Mooch lists include not only your name, address, and phone number, but also a history of your financial dealings with other telemarketers. These are resold to still other companies for anywhere from \$10 to \$100 per name.

If you've been victimized once, experts say, you're more likely to be hit

one. "As soon as I get on the phone with them...two hands go through that phone," says another. "One hand goes up the wall and starts painting pictures. The other hand is in their checkbook... and writing the check out."

Before 1995, victims of telemarketing fraud had little recourse. "The cases were very difficult to make," says Charles Owens, chief of the Financial Crimes Section of the FBI. Elderly victims were usually too embarrassed to admit they had been conned, and were reluctant to travel to the states where the

ENCORE

Stopping Scammers.

DON'T GET HUNG UP ABOUT HANGING UP

SCAM

Continued from Page 11

general in Oklahoma and California, from where the calls were made. And eventually, Mr. Green says, law-enforcement officials in California shut down the scammers in that state and got some restitution for victims. But he was returned only \$100 of his money. And the officials told him that "the crooks simply moved to Mexico, where they disappeared."

The scammers stopped phoning Mr. Green for a while last year. But even after a victim stops biting for the nonexistent prizes, scammers have another technique to milk the unwary: Mr. Green says that earlier this year he was phoned by a man who identified himself as a Georgia attorney, who offered to get all of Mr. Green's \$50,000 back for a fee of \$3,000.

"He began to call me every three months, but upon the advice of the police, I recorded his calls and turned them over to the authorities in my state and California," says Mr. Green.

And several weeks ago he got a new call from a scammer offering him prizes again. "I guess that I'm still tagged as a sucker, but I have learned my lesson," he says.

CONVINCING CROOK

Too bad Mr. Green didn't first see a video tape made by AARP of Bart Chamberlain, a self-admitted scammer who in October 1997 pleaded guilty to wire fraud and money laundering. He was sentenced to 52 months in federal prison in California, according to the U.S. Attorney's Office in Las Vegas, where Mr. Chamberlain was arrested.

On the AARP tape, made shortly after

Mr. Chamberlain says that "any good con artist is going to use whatever the senior tells him about themselves against them. If you tell me that you're a veteran of World War II, I say, 'I'm a veteran of Desert Storm, so we've got something in common.' You always look for an angle with the victim to make yourself more believable."

In several instances, he says, he disguised his voice to represent his "boss" and a "photographer," both of whom would admonish potential victims to drop their skepticism because the scammers planned to fly out right away to take their pictures as "winners."

Mr. Chamberlain agrees that a common misconception is that well-educated, successful people are too smart to be fooled by such pitches. He even brags about his roster of suckers. "I certainly had victims that were retired lawyers, U.S. Navy rear admirals and doctors," he says. "There were people who were very successful in their lines and held a high standing in their communities and positions of leadership. They, too, fell prey and were victimized."

NO ESCAPE

That's what happened to Mary Ann Downs, a 78-year-old widow, who lost \$74,000 to telephone scammers who started phoning her in 1993. "I am a smart, educated, well-traveled woman," she says. "My husband was a lawyer and judge, and my oldest daughter is a criminal prosecutor. But none of this protected me from becoming a victim of fraudulent telemarketers."

She says that shortly after she was diagnosed with breast cancer, at a time when she was very vulnerable, she began getting phone calls from a company in Las Vegas, telling her she had won one of several big awards: a luxury car, vacation trip, thousands of dollars in cash or a diamond bracelet.

The caller, she says, "was friendly, always pleasant, and eager to help me win the big prizes his company awarded. At first, I enjoyed talking with him."

He told her that her chances of winning "the big payoff" would be better if she bought some of their products, Mrs. Downs says.

"So I bought dozens of ball-point pens, baseball caps saying 'Say No to Drugs,' money clips, cleaning supplies and other items that I had no use for," she says. "Each time he called, we talked and I gave him my credit card number for the purchase. This happened over and over."

Eventually, she says, the friendly talk that had won her over turned uglier. "When I told him that I couldn't put any more money in, he said he knew I had investments that I could liquidate," she says. "That frightened me because I didn't know how he knew about my finances. So I gave in." Now Mrs. Downs says she realizes that the scammer was lying and probably didn't know about her investments. "But his pressure worked."

How could she fall for these rip-offs? "I am not stupid or crazy because I sent money to win these prizes," says Mrs. Downs. "I was deceived and I did not know where to turn to help. I was people are criminals and have the psychology down pat. They will lie and have an answer for every effort to say no."

Mrs. Downs didn't tell anyone what was happening, but she laments that she just couldn't. She even moved to Raleigh, N.C., from San Antonio, in part to get away from the scammers. But someone with a slick line found her anyway, she says.

"Within days, a man who said he was an attorney with the federal court in California said that business records were impounded by the court and showed that I had been a victim of a scam," she says. He asked for close to \$5,000 and said that the

money she had already spent was to be delivered as soon as she paid the fees.

She says she sent a total of \$4,460 to an address in California. But "no money was delivered to me," says Mrs. Downs. She kept phoning the number he gave her and finally someone answered and told her it was a pay phone.

So Mrs. Downs finally reported the fraud to her son and daughter, who informed the FBI and the attorneys general in Nevada, Utah and Louisiana. But she never got any money back.

CHANGE OF VENUE

Mrs. Grant of the National Consumers League says one of the best ways to avoid being victimized is to know the most prevalent types of scams being perpetrated nowadays. The offer of products emblazoned with "Say No to Drugs" is a common strategy employed by fraudulent telemarketers, because it makes the victims feel like do-gooders. Vitamins are another product commonly offered senior citizens to prey on their health concerns. But what most of these scams have in common is the promise of big prizes in exchange for money upfront.

Ms. Grant says that "phone shops" that offer illusory prizes are now originating in Canada, Europe and Asia. That's because recent laws in such states as Ohio, Vermont and Pennsylvania have sharply increased the penalties for such offenses. Of more than 3,000 such scams reported to the league annually, more than 20% were from

out-of-country sites, she says. In Toronto, Barry Elliott, a detective and telemarketing fraud specialist with the Ontario Provincial Police, says telemarketing scammers moved into Canada in force starting in 1995 from California. "But the big problem we have is that many of the serious victims are in a state of denial and are terribly embarrassed that they were taken to the cleaners," says Mr. Elliott. "This has

led to a lot of underreporting of this crime, which is why the estimates vary so much."

An AARP survey last year of 322 victims of sweepstakes scams showed that more than half didn't initially tell anyone else because they felt the loss was personal, not important enough or felt embarrassed about it. Many of the survey respondents were only found from phone lists of apprehended scammers.

Indeed, Mrs. Downs says it took her several months before she was able to tell her family about being scammed. "They were horrified and felt that I had lost control of my senses," she says. "But I had to explain that the scammers knew how to overcome almost every objection once they get into your house by telephone."

MR. BERTON IS A WRITER IN HOBOKEN, N.J.

has on cassette tape, including a 90-page booklet plus audio and video tapes, aimed at stopping telephone fraud. It's called "Don't Fall for a Telephone Line" and can be obtained free of charge from the group's regional offices in Boston (617) 723-7000; Atlanta (404) 525-0277; Chicago (773) 714-5000; Dallas (214) 258-0000; and Seattle (206) 325-7918. AARP also has state offices in 57 major cities or state capitals.

And for anyone who has trouble getting rid of scammers once they call, here is some advice from several state attorneys general:

WHAT TO SAY:
 • "I do not respond to telephone solicitations. Please do not call me again. Goodbye." Then hang up.
 • "Send me information and I will call you back after I consult with my state's attorney general's office. Goodbye." Hang up.
 • "If you want an immediate answer, my

answer is 'no.' Please do not call me again. Goodbye." Hang up.

HANG UP IMMEDIATELY IF A TELEMARKETER:
 • Keeps talking after you say "no."
 • Wants money upfront for fees, shipping costs, handling charges, insurance or whatever for a prize you have supposedly won but not received.
 • Offers to send a courier to pick up your check.
 • Insists that you make no immediate decision.
 • Offers—for a fee—to recover money you previously lost.
 • Makes you feel pressured or uncomfortable with words and promises.

THE MOST IMPORTANT RULE:
 • Please—repeat over—give your credit card, bank account or Social Security numbers over the phone to unsolicited callers.



Mary Ann Downs

he entered prison last year, Mr. Chamberlain admits he cheated seniors out of hundreds of thousands of dollars, money he says he used mainly to buy cocaine.

Mr. Chamberlain, a handsome red-head with a gift for gab, says in the tape: "The things that I said, the things that I did, the action that I took were done out of desperation to support my craving for drugs." Mr. Chamberlain adds that the life of most fraudulent telemarketers "is dominated by drugs and alcohol and heavy gambling. It's just sheer greed or the drive for easy money, or to have nice cars and nice things."

Here is Mr. Chamberlain's description of how he ensnared the unwitting prospect: "Everybody we call is made to sound like they're the only one. The big word is, 'Congratulations. Your numbers match up and you're the grand prize winner. You have been guaranteed one of the biggest awards we've ever given away.'"

"We hype the whole thing to every single person that we call, promising them round-trip vacations, a 3-D camera or a diamond collection. Then we tell them, 'Now write this down. There's a one-time promotion fee of \$698.50 that you must first send us.'"

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Active Montanan

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The Independent Record

Putting a stop to

Phony Phoners

Telemarketing fraud bill may become law this time

They are usually more than 50 years old and most often senior citizens. They're frequently active socially and politically and are not necessarily uneducated. They are trusting, friendly and polite people.

They are often victims of telemarketing fraud.

National estimates put losses to fraudulent telemarketers in excess of \$40 billion per year. Montana citizens alone lose millions of dollars a year, and the National Fraud Information Center

reported that in 1997 Montana had the second highest rate of fraudulent telemarketing complaints in the nation. Fraudulent telemarketers reportedly target states with weak telemarketing laws, leaving Montanans

particularly vulnerable to this type of criminal.

One law, enacted in 1991 designed to protect Montanans against telemarketing fraud will be introduced in the 1999 Legislature. After being rewritten for the third time, supporters feel this bill is fair to legitimate telemarketers, yet tough on fraudulent ones.

"This would allow the state more strict restrictions on the telemarketing business to protect consumers," said Sen. John Hentel R-Moore, who will be the primary sponsor of the bill.

THE BILL ALREADY has broad-based support among the various public and private organizations potentially impacted by the legislation, and according to Hentel, at least 17 lawmakers have already offered to co-sponsor the bill.

"I have a bipartisan support on this bill," Hentel said. "There are nearly 50 members of both Republican and Democratic caucuses supporting the measure."

During the 1995 and 1997 legislative sessions, a bill was introduced, but each bill stalled in the Legislature.

In 1997, however, an interim study was granted by the Montana Legislative Council along with a bill draft request. The request was sponsored by Sen. Debbie Shea, D-Butte, which allowed the stakeholders, including the Department of Commerce, Department of Justice, Direct Marketing Association and American Association of Retired Persons (AARP) to get together during the interim study and craft a bill that all parties could support.

THE NEWLY WRITTEN bill will be introduced in the 1999 legislative session. The bill will contain:

- registration and bonding for telemarketers doing business in Montana;
- a requirement of extensive disclosures in prize promotions and sweepstakes, as well as a description of the no-purchase, no-payment method of entering the contest;
- specific prohibitions against abusive predatory practices, such as direct access to consumer bank accounts without express written authority; and
- a range of criminal penalties and civil remedies for violations of the law.

HENTEL THOUGHT to get more input from the committee he chaired — Business and Industry — unanimously opposed the bill in the 1997 Legislature. Although the members of the committee felt there was a need to protect Montana consumers against fraudulent telemarketers, they felt the bill was too strict against legitimate telemarketers.

"I saw a very important need for this group of people (senior citizens) to be protected," Hentel said.

When he got this piece of legislation on the table this time around, said Hentel, about 1997 State Legislative Committee of Hentel. "We finally have a bill that meets the needs of consumers."

Stories and photo
by
Annie Thompson



Betty Babcock, former state representative and wife of former Gov. Tim Babcock, sits behind her telephone fraud life. Babcock, a victim of fraud, has been active in the fight to get tougher laws against fraudulent telemarketers in Montana.

Betty Babcock tells her story, shares her fight against fraudulent telemarketers

Former state representative and first lady of Montana, Betty Babcock is one woman who learned a hard lesson.

Hang up on telemarketers who offer prizes too good to be true.

The 76-year-old Babcock, wife of former Gov. Tim Babcock and a state representative from 1974 to 1976, lost thousands of dollars to fraudulent telemarketers in 1993. After participating in several promotions and sweepstakes, she was told she was the top V.I.P. winner in the state and had won a 1992 Lincoln. The car was never delivered and she never saw a cent of her money back. When she realized what she was involved in, Babcock attempted to rectify her mistakes. She talked to the consumer advocate, Myrna Ormholdt Mason, report

"I was told they were sending me an airline ticket, paying the hotel and all the expenses,"

Babcock said. After many delays and several conversations, the fraudulent telemarketers wanted her to send \$5,000 to prepay the taxes.

I can offer my attorney's advice and being cautioned by my husband not to send the money I was so positive I had won I finally, and foolishly, sent \$2,500 in taxes agreeing to pay the balance when the car was delivered.

The car was never delivered and she never saw a cent of her money back. When she realized what she was involved in, Babcock attempted to rectify her mistakes. She talked to the consumer advocate, Myrna Ormholdt Mason, report

"I was told they were sending me an airline ticket, paying the hotel and all the expenses,"

(More BABCOCK, page 2C)

BEST COPY
AVAILABLE

Babcock

Continued from Page 1C

ed to Attorney General Joe Mazurek, and called the FBI who sent an agent to interview her more than once.

"This was a few years ago and at the time there didn't seem to be any laws on the books that offered any solutions to the problem," she said.

BEFORE THE 1997

legislative session, Babcock was talking to the chairman of American Association of Retired Persons (AARP) and he told her that telemarketing fraud was their top priority.

Not long after that, she received a call from a lady whose mother had lost \$87,000 to con artists.

"She asked if I would

help with legislation. No one knew yet that I was a victim," she said.

"I just felt so bad hearing that and I thought maybe there's something I can do," she said. After much soul searching, Babcock chose to publicly admit she was a victim of fraudulent telemarketing.

She testified at the senate hearings for the bill during the 1997 session.

Since then she testified, Babcock has appeared on a couple of television shows and is still doing interviews. The Wall Street Journal recently interviewed Babcock about her story.

"IT'S JUST AS violent as rape or robbery, only they come in your home via telephone," she said. She encourages anyone who has been scammed in report it, because nothing can be done otherwise.

Free 'Fraud Fighter' training today

Don't fall for a telephone line. Learn to protect yourself and others from fraudulent telemarketers. Each trainee will receive a Fraud Fighter's kit with video, Fraud Fighter's T-shirt and refreshments.

Tuesday, Nov. 10
Colonial Best Western
2301 Colonial Dr., Helena
9 a.m. to 12 p.m.

Don't return telemarketing numbers

Here's how this scam works:

■ You get an urgent message saying a relative is ill, you have won a great prize, or debt collection actions will start if you don't call a phone number with an NW area code.

Here's what can happen:

■ If you are calling from the United States, you may be charged \$25 per minute.

■ Frequently the person who answers pretends not to understand you, or won't get a long recorded message try to keep you on the phone for as long as possible to run up the charges.

■ When you get your phone bill, you may find a charge for more than \$100.

■ The NW area code is located in the British Virgin Islands and is not covered by U.S. regulations of 900 numbers that require warning you of charges to your phone bill.

■ No matter how you get the message, if you are asked to call a number with an NW area code that you don't recognize, disregard the message or investigate it further.

Federal Trade Commission regulations



■ In the beginning of a call, the caller must identify the company's name and, if it's a sales call, what is being sold.

■ If a prize is offered, you have to be told immediately that no purchase or payment is necessary to win.

■ You must not be asked to pay in advance for services. Pay for services only after they are actually delivered.

■ You must not be called before 8 a.m. and after 9 p.m., your local time.

■ You must not be called repeatedly or be intimidated by the caller.

■ You must be told the costs and restrictions before you pay for products or services.

Tips to combat the criminal caller

■ Beware of anyone who asks you to send money or buy anything sight unseen, unless you are certain you are dealing with a reputable firm.

■ Never give out your credit card information over the phone.

■ Don't pay for a free prize. Free is free. If a caller tells you the payment is for taxes on the prize, he or she has violated federal law.

■ Refuse to be rushed into anything. The more a caller tries to hurry you into buying or sending money, the more likely he or she is a criminal.

■ Offering to send a messenger to pick up your payment is a clear sign of fraudulent activity.

■ Asking the caller to put the offer in writing rarely offers protection to the consumer. It often leads to credible-looking letters that in the consumer's mind seem to legitimize what in fact is a bad deal.

■ If you receive a suspicious call or an unsolicited one that sounds similar to the "Criminal lines" call Montana's attorney general, Joe Mazurek at 444-2026 or Annie Barrios in the Department of Commerce Department at 444-3553.

Help
yourself
with the scam,
law and the
to combat
the criminal
caller

Ross Cannon
Lobbyist for the Direct Marketing Association
P. O. Box 5717
Helena, MT
406/442-9930

SENATE BUSINESS & INDUS

EXHIBIT NO. 21

DATE 1-15-99

BILL NO. SB 27

DIRECT MARKETING ASSOCIATION'S [DMA] POSITION CONCERNING S.B. 27.

INTRODUCTION

DMA supports legislation regulating telemarketing sales in Montana. To that end since the end of the 1997 legislative session DMA has met with Sen. Debbie Shea, both national and local representatives of the AARP, representatives of the Department of Justice and of the Department of Commerce in an effort to craft a bill which could be offered at this session as an agreed-to bill by all interested parties. To that end SB 27 is the product of the several meetings of this working group. As between DMA and AARP there remain only two unresolved matters:

(1) In the definition of "solicitation" in Section 3(9) DMA proposes the following amendment:

the notification or advertisement requires a response by telephone to learn material terms and facts about the offer and through that response, a seller or telemarketer attempts to make a sale of goods or services;

(2) In the list of prohibited acts in Section 11 DMA wants the right to submit for payment a check, draft or other form of negotiable paper drawn on a person's checking, savings, bond or other account either by (a) express written authorization or (b) by express oral authorization which is tape recorded and made available upon request to the customer's bank or (c) written confirmation of the transaction sent to the customer prior to submission for payment of the check, draft, etc. DMA's proposed amendment reads as follows:

Strike section 11 (e) in its entirety and substitute the following:

(e) Obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(A) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(B) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information;

(i) The date of the draft(s);

(ii) The amount of the draft(s)

(iii) The payor's name;

(iv) The number of draft payments (if more than one);

(v) A telephone number for customer inquiry that is answered during normal business hours; and

(vi) The date of the customer's oral authorization.

(C) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

(i) All of the information contained in subsection (e)(B)(i)-(vi) of this section.

(ii) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is accurate.

DMA opposes the Department of Commerce's proposal to delete subsection 13 of Section 5 which exempts from the registration and bonding requirements provided for in Section 4 of the bill "a person soliciting for the sale of a magazine or newspaper of general circulation." DMA would not object to a subsection 13 which reads as follows:

(13) Sale of a newspaper of general circulation, or a periodical or magazine of general circulation sold by the publisher or the publisher's agent by written agreement.

With the foregoing amendments DMA supports SB 27.



SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 52
DATE 1/15/99
BILL NO. S B 27

January 11, 1999

MONTANA AARP

Senate Business and Industry Committee
Senator Hertel, Chair
And Committee Members

Re: Senate Bill No. 27
Montana Telemarketing Registration and Fraud Prevention Act

My name is Rene' Worley, I testified in favor of the Telemarketing Fraud Bill in 1995. I am now serving as chair of the AARP Telemarketing Action Team.

- We have all heard or read horror stories about telemarketing fraud. Tales of victims, all too often senior citizens, being ripped off and left impoverished and embarrassed by unscrupulous telephone solicitors. The sad fact is that not only are the stories true, they are an everyday occurrence in Montana. I know from personal experience as a member of my own family was scammed by forty-seven (47) companies from fourteen (14) states in an eighteen (18) month period. The silver-tongued moochers scammed her out of \$87,000.00 with their persistent, friendly chatter and a smooth answer for every doubt.
- A 1996 study by AARP of 745 victims over 50 years of age shows that more than 30% are college graduates, 90% own their own homes and more than 40% have high incomes. Unfortunately the crime is not reported because the victim is embarrassed and ashamed.
- Legitimate telemarketing benefits consumers. Competition increases and product and service options are expanded. AARP believes that legitimate telemarketing businesses in Montana will benefit from Senate Bill 27.
- The telemarketing fraud consumer awareness is an important element of the bill to improve individual ability to recognize fraud situations and avoid becoming a victim.
- Testimony from former telemarketing con artists reveals that fraudulent out-of-state operators routinely target states with weak telemarketing laws. This money will never be spent or invested in our state again.
- I urge you to vote "Do Pass" on Senate Bill 27 against these Black Collar Criminals.

Thank you,
Rene' Worley
324 Garfield Street
Wolf Point, MT 59201

Mailed - 8/29/91



NATIONAL HEALTH CARE
Associates

LETTER OF RELEASE

CONGRATULATIONS ON RECEIVING THE 10CT. TOTAL WEIGHT GENUINE SAPPHIRE AND DIAMOND TENNIS BRACELET.

TO RECEIVE YOUR PREMIUM, SIMPLY SIGN AND RETURN THIS RELEASE FORM. THEN MAIL IT TO NATIONAL HEALTH CARE ASSOCIATES. THE ADDRESS FOR NATIONAL HEALTH CARE ASSOCIATES IS:

NATIONAL HEALTH CARE ASSOCIATES
P.O. BOX 80425
LAS VEGAS, NV. 89180

AGAIN, CONGRATULATIONS AND ENJOY YOUR 10CT. TOTAL WEIGHT GENUINE SAPPHIRE AND DIAMOND TENNIS BRACELET

SINCERELY,

NATIONAL HEALTH CARE ASSOCIATES

PLEASE ALLOW 4-6 WEEKS FOR DELIVERY P

23807BM

PLEASE SHIP MY 10CT. TOTAL WEIGHT GENUINE SAPPHIRE AND DIAMOND TENNIS BRACELET THE FOLLOWING ADDRESS:

NAME (PLEASE PRINT)

PERSONAL SIGNATURE

ADDRESS (INCLUDE ALL STREET & APARTMENT NUMBERS)

CITY, STATE AND ZIP CODE

PHONE NUMBER

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 26, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:

Executive Action: SB 27; SB 115; SB 129

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 27

Motion: SEN. MCCARTHY moved that SB 27 DO PASS AS AMENDED.

Discussion: First, Bart Campbell explained that the Committee had passed six amendments last Friday, 1-22-99 that were mainly "clean up the language" amendments. That is why the motion should be Do Pass As Amended. The amendments that are to be looked at today are separate and each should be taken separately. By Thursday, he should have all amendments that the Committee has adopted edited into one amendment for the bill.

Motion: SEN. MCCARTHY moved that amended SB 27 BE AMENDED with the amendment listed as #4 in EXHIBIT(1).

Discussion: Bart Campbell explained that #4 was submitted by the Department of Justice. To summarize, right now the provisions of this act is a violation of 30-14-103 which is a consumer protection provision. This says that in addition to that, it is a violation and there will be a new section 14 which the Committee will get to later and the Montana Unfair Trade Practices Protection Act. It is making "wider" what you are violating if you violate a provision of this act.

SEN. MCCARTHY asked Mr. Campbell to explain the penalties on page 14. Mr. Campbell said that this will be an addition to Section 14. It is inserted as Section 14 but would then become Section 15. Section 30-14-142 is what the penalties are if you violate 30-14-103, the general consumer protection. This is adding some specific penalties for a violation of the Montana Telemarketing Registration and Fraud Prevention Act which is what this new bill is. The Department of Justice is looking for some other penalties in addition to the ones that are already in law. Most are civil penalties with the exception of Subsection 3.

Vote: Motion carried 6-0.

No motion was made on amendment #12. Discussion was held on amendment #12 which was submitted by the Direct Marketing Association. This amendment #12 was labeled "A" and "B" so the committee could look at each separately. SENATOR DEBBIE SHEA was asked to speak to the bill and this amendment because she was on the interim committee that put this bill together.

SEN. SHEA gave some background. Two years ago she put in a draft request for telemarketing registration and fraud prevention. In the 1997 Legislative Session there was a bill addressing this

problem. The bill did not truly address the issue and offer the safety measures. Therefore that is why the interim committee was established. This bill addresses registering with the State, posting a bond, consumer awareness program and provides criminal and civil penalties. The number #12 amendment takes out what we as the interim committee specifically wanted in the bill. If the telemarketer tapes the conversation, he can take it to the bank. If the telemarketer is legitimate that is good, but they were not worried about that kind of telemarketer. A fraudulent telemarketer could bring the tape in and once they have access to the consumer's account they can do all kinds of mischief.

{Tape : 1; Side : A; Approx. Time Counter : 13.7}

Mr. Campbell made some statements concerning amendment #6. There is a technical problem with this. This is adding a subsection that really says that a telemarketer can't accept payment for goods or services by credit card or pre-authorized check if there has been an offer of a premium or a gift as an inducement to the purchase of the goods or service. If the Committee accepts this, the Committee must go back through this bill and change it a lot. This bill has specific language in it that you may offer a prize, etc. as a telemarketer but there are disclosure requirements in this bill.

Amendments #12-A; #12-B; #2; #6 and #17 all died for lack of a motion by a Senator on the Business and Industry Committee.

Motion: SEN. SPRAGUE moved that amended SB 27 BE AMENDED with the amendment listed as #16 in EXHIBIT(1).

Discussion: This amendment was a request from the MT Broadcasters Assoc. **Mr. Campbell** explained that on page 6, line 19 it says that a person soliciting the sale of services provided by a satellite or cable television system or radio or television stations authorized by the federal government. . . There seems to be no problem adding "or radio or television stations". He did not know what sale of services a radio or television station solicit when they broadcast over the airwaves and maybe this doesn't really hurt anything. **SEN. SPRAGUE** felt that this wasn't a really important amendment, but radio can get fairly creative and maybe there should not be a loophole left for someone to get

through. Also, the elderly are probably not on as much cable as just the local television stations.

Vote: Motion carried 6-1 with SEN. MCCARTHY voting no.

{Tape : 1; Side : A; Approx. Time Counter : 20.9}

Motion: SEN. MCCARTHY moved that amended SB 27 DO PASS AS AMENDED.

Discussion: SENATOR FRED THOMAS brought the subject of the bonding of telemarketers to the floor. He wanted to know if this had been addressed by anyone. It was his opinion that no bond would be available to a telemarketer under the provisions of this bill. He felt that there should be some modification concerning this bonding issue. The section that is being looked at is on page 4, starting at line 19.

SEN. JOHN HERTEL announced that a person was in attendance who is an expert in the bonding field. He offered to let committee members ask questions if they so desired.

Bob Durand, State Auditor's Office. He has been in this business for 24 years and has underwritten a variety of surety requests. The request that is in the law with a three year tail could make that bond somewhat difficult to consider because you are looking at a three year obligation versus a one year obligation. There is rule making authority for developing the bond language to make the bond acceptable to the surety industry with their input. With any kind of surety, the bonding company will look at the three "C's" of bonding which are: Cash, Capacity (experience) and Character. Those are the three items that will be underwritten by an underwriter.

SEN. MCCARTHY asked if Mr. Durand felt the bond section was enforceable or feasible. Mr. Durand felt that some of the terms make it difficult for a surety to openly write this kind of a bond. He would also be happy to work with anyone to make this section better.

SEN. HERTEL stated that there seemed to be some difficulties in getting this established. He asked if the amount of \$50,000 is

part of the problem. **Mr. Durand** replied that the higher the bond penalty, the more the underwriting will have to be done. They would be exposing themselves to \$50,000. Some states have \$100,000. Others are less than that. The higher the penalty, the less possibility of a bond being issued.

SEN. DAVE BERRY asked what kind of cost is it for a bond. **Mr. Durand** stated that the way it is written currently in the bill, it would seem that the premium on this could go to \$40 or \$50 per thousand. This being because it is a three year obligation. By tweaking the law to make the bond more compliant to the codes, and eliminating the direct right of action of third parties then it would become easier to underwrite and make the fees possibly as low as \$10 per thousand. The input from the surety industry would be very helpful to see what would be acceptable to an underwriting practice.

{Tape : 1; Side : A; Approx. Time Counter : 35}

SEN. SPRAGUE asked about the three year discovery period. **Mr. Durand** replied that if a surety company were to have any kind of loss on a bond, most generally the loss would be in the first year. Then to open it up for another discovery period of two more years, this demands that the surety company have reserves for potential losses and would expand the cost. He went on to reiterate that a high bond of \$100,000 would make it more difficult to get a bond than if the three years were pulled back to two years. One year is a standard discovery period.

One other problem with the bill is the direct right of action by third parties. This is on page 4, line 20. The language reads "The bond must provide for the indemnification of any person suffering a loss as the result of violation of (sections 1 through 13)." That type of language would demand that the surety company handle all of the potential claims. If they are charging \$10 per thousand, they do not collect enough premium to be looking at any claims situation. The Department of Commerce or the Justice Department should be the department that handles the complaints. And when the fraud is determined by the department, then they could send the surety company a letter and say "pay". If we get it to the point where it indemnifies the State of Montana, it makes the bond significantly easier to write.

SEN. MCCARTHY asked **Mr. Campbell** if this issue was ever discussed in the interim committee. **Mr. Campbell's** recollection was more to the general difficulty in securing a bond and **Mr. Canon** spoke to that difficulty. That was all. The change that is being discussed here could be for the better possibly.

SEN. THOMAS asked **Mr. Bill Olson, AARP** if the amount of \$50,000 were to be changed to \$25,000, would that be acceptable or not.

Mr. Olson said that it might be alright. But there are two factors that should be weighed. One is the amount of the bond and the second one is the term of that bond. One state, Texas, has an amount of \$10,000. Arizona has \$100,000. There was an individual that was scammed in Arizona for \$3400 and two years later, because of the existence of a bond, they recovered \$2200.

SEN. THOMAS then asked about the three years discovery. He asked if one year would be acceptable. **Mr. Olson** said that one or two might be acceptable. **SEN. THOMAS** then asked about the indemnification of the State of Montana for a person suffering a loss instead of just any person suffering a loss. **Mr. Olson** said that was acceptable.

Mr. Campbell asked the committee to look at page 5, line 10. The aggregate liability of the surety company to all persons injured", would **SEN. THOMAS** like to change it there also to include "the State of Montana". He said yes.

Motion/Vote: **SEN. THOMAS** moved that SB 27 BE AMENDED. Motion carried unanimously. 7-0 (page 4, line 20 following indemnification, and add "to the State of Montana for" and strike "of" and also on page 5, line 10 "the aggregate liability of the surety company to the State of Montana for all persons . . .")

{Tape : 1; Side : B; Approx. Time Counter : 0}

Motion/Vote: **SEN. THOMAS** moved that SB 27 BE AMENDED. Motion carried 6-1 with **SEN. COCCHIARELLA** voting no. (page 4, line 26; change 3 years to one year and on page 5, line 1; change 3 years to one year)

Vote: Motion carried unanimously. This is the vote on the original motion on SB 27 DPAA by **SEN. MCCARTHY**. 7-0

The amendments were finalized and handed in by Mr. Bart Campbell and will become EXHIBIT(2).

{Tape : 1; Side : B; Approx. Time Counter : 1.3}

EXECUTIVE ACTION ON SB 115

Motion: SEN. THOMAS moved that SB 115 DO PASS.

Discussion: SEN. THOMAS offered amendments EXHIBIT(3). He also handed out an exhibit explaining SB 115 EXHIBIT(4).

Motion: SEN. THOMAS moved that SB 115 BE AMENDED.

Discussion: SEN. THOMAS explained how the bill works using the figures 2 to 50. He explained the figure of "five" in "groups of five or more" as the floor in the bill. He then explained the meaning of participation requirements in the equations put forth by the insurance companies.

SEN. MIKE SPRAGUE asked what is the provision for participation requirement. SEN. THOMAS said that figure is up to the insurance companies. It could be negotiable, but unlikely. Usually for small groups it is 80% to 100% participation.

SEN. THOMAS explained that the purpose of the bill is counting those people in the participation requirements who work at a company and are insured under their spouse's coverage. The question then arises at how low is the committee willing to go in allowing smaller companies to use these participation figures.

SEN. MCCARTHY feels that it is the smaller companies with two to four employees that need the protection of this bill.

{Tape : 1; Side : B; Approx. Time Counter : 12.8}

SEN. MCCARTHY asked if this bill was creating a sick people pool.

Ms. Claudia Clifford, State Auditor's Office said that most people opt in and out of insurance groups for economic reasons. They are looking for better coverage at a better cost if at all possible.

#4

Amendments to SB 27
1st Reading Copy (White)

For the Senate Business and Industry Committee

Prepared by Steve Bullock
Department of Justice
January 7, 1998

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 1-26-99
BILL NO. SB 27

1. Page 3, line 16.
Following: **"telemarketers"**
Strike: **"-- felony violations"**
2. Page 5, line 17.
Following: "of".
Strike: "[section 8, 10, 11, or 12] or".
3. Page 5, line 18.
Following: the second "of"
Insert: "[Section 14] and"
4. Page 12, line 3.
Following: "30-14-103"
Insert: "and is subject to the penalty provisions of
[Section 14] and the Montana Unfair Trade Practices and Consumer
Protection Act of 1973".
5. Page 12, line 6.
Following: "telemarketer"
Insert: "purposely or knowingly"
6. Page 12, line 23.
Following: "30-14-103"
Insert: "and is subject to the penalty provisions of
[Section 14] and the Montana Unfair Trade Practices and Consumer
Protection Act of 1973".
7. Page 12, line 25.
Following: **"practices"**
Strike: **"-- burden of proof."**
8. Page 13, line 9.
Following: line 8
Strike: line 9 in its entirety through line 11.

Ross Cannon
Lobbyist for the Direct Marketing Association
P. O. Box 5717
Helena, MT
406/442-9930

#12

DIRECT MARKETING ASSOCIATION'S [DMA] POSITION CONCERNING S.B. 27.

INTRODUCTION

DMA supports legislation regulating telemarketing sales in Montana. To that end since the end of the 1997 legislative session DMA has met with Sen. Debbie Shea, both national and local representatives of the AARP, representatives of the Department of Justice and of the Department of Commerce in an effort to craft a bill which could be offered at this session as an agreed-to bill by all interested parties. To that end SB 27 is the product of the several meetings of this working group. As between DMA and AARP there remain only two unresolved matters:

(1) In the definition of "solicitation" in Section 3(9) DMA proposes the following amendment:

A the notification or advertisement requires a response by telephone to learn material terms and facts about the offer and through that response, a seller or telemarketer attempts to make a sale of goods or services;

(2) In the list of prohibited acts in Section 11 DMA wants the right to submit for payment, a check, draft or other form of negotiable paper drawn on a person's checking, savings, bond or other account either by (a) express written authorization or (b) by express oral authorization which is tape recorded and made available upon request to the customer's bank or (c) written confirmation of the transaction sent to the customer prior to submission for payment of the check, draft, etc. DMA's proposed amendment reads as follows:

Strike section 11 (e) in its entirety and substitute the following:

B (e) Obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(A) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(B) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information;

(i) The date of the draft(s);

(ii) The amount of the draft(s)

(iii) The payor's name;

(iv) The number of draft payments (if more than one);

(v) A telephone number for customer inquiry that is answered during normal business hours; and

(vi) The date of the customer's oral authorization.

(C) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

(i) All of the information contained in subsection (e)(B)(i)-(vi) of this section.

(ii) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is accurate.

DMA opposes the Department of Commerce's proposal to delete subsection 13 of Section 5 which exempts from the registration and bonding requirements provided for in Section 4 of the bill "a person soliciting for the sale of a magazine or newspaper of general circulation." DMA would not object to a subsection 13 which reads as follows:

(13) Sale of a newspaper of general circulation, or a periodical or magazine of general circulation sold by the publisher or the publisher's agent by written agreement.

With the foregoing amendments DMA supports SB 27.

#2

**DRAFT
PROPOSED AMENDMENT TO SENATE BILL 27**

Delete language regarding attorney fees in section 13(2):

"(2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a prohibited act or practice is entitled to recover actual damages or \$500, whichever is greater, ~~attorney fees, court costs,~~ and any other remedies provided by law."

#2

ATT

DRAFT
PROPOSED AMENDMENT

#6

Amend Senate Bill 27, Page 12, Section 11, Subsection (1) by adding a subsection (g) after line 22 to read as follows:

(g)To accept payment for any goods or services by credit card or preauthorized check if the solicitation for sales of such goods or services is accompanied by an offer of a premium or gift or participation in a sweepstakes ~~has~~ inducements to encourage the purchase of the goods or services.”

JEROME ANDERSON
ATTORNEY AT LAW
P.O. BOX 866
SUITE 4E, POWER BLOCK BLDG.
6TH AVENUE & LAST CHANCE GULCH
HELENA, MONTANA 59624
(406) 449-3118
FAX # 406-449-3668

not
good

Amendments to Senate Bill No. 27
1st Reading Copy

For the Business and Industry Committee

Prepared by Bartley Campbell
January 25, 1999

#16

1. Page 6, line 19.

Following: "system"

Insert: "or radio and television stations "

- END -

PROPOSED AMENDMENTS TO SB27

1. In title after the third semi-colon and before "Providing Civil and Criminal Penalties", insert: Providing Exemptions.
2. Section 5, delete subsections (1) and (8).
3. Add new section 17. **Exemptions from provisions of Act.** The provisions of this Act do not apply to:

(1) any securities, commodities, or investment brokers, dealers, or investment advisers or any associates of securities, commodities, or investment brokers, dealers, or investment advisers who are subject to licensure or registration by the securities and exchange commission, the national association of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an agency of this state or any other state and who are soliciting within the scope of their license or registration;

(2) any person licensed as an insurance producer under Title 33, chapter 17, part 2, or staff members, licensed or unlicensed, of the producer.

Amendments to Senate Bill No. 27
1st Reading Copy

For the Business and Industry Committee

Prepared by Bartley Campbell
January 12, 1999

1. Page 1, lines 14, 18, 19, 20, 22, 23, and 29.

Strike: "13"**Insert:** "14"

2. Page 1, line 23.

Strike: "(a)"

3. Page 1, line 25.

Strike: "(i)"**Insert:** "(a)"**Renumber:** subsequent subsections

4. Page 1, line 30 through page 2, line 4.

Strike: subsection (b) in its entirety

5. Page 2, line 6.

Strike: "13"**Insert:** "14"

6. Page 3, line 5.

Strike: "commercial"

7. Page 3, line 8.

Following: "States"**Insert:** "or an agency, bureau, or department of government of the
United States"

8. Page 3, line 16.

Strike: "-- felony violations"

9. Page 4, lines 21 and 28.

Strike: "13"**Insert:** "14"

10. Page 5, line 12.

Strike: "13"

Insert: "14"

11. Page 5, line 17.

Following: "of"

Strike: "[section 8, 10, 11, or 12] or"

12. Page 5, line 18.

Following: "provisions of"

Insert: "[section 14] and"

13. Page 6, line 18.

Following: "2"

Insert: ", or staff members, licensed or unlicensed, of the
producer"

14. Page 6, line 19.

Following: "system"

Insert: "or a radio or television station"

15. Page 6, line 22.

Following: "commission"

Insert: ", the federal communications commission, a rural
telephone cooperative or its subsidiary or agent,"

16. Page 7, line 26.

Strike: "13"

Insert: "14"

17. Page 8, line 24.

Strike: "13"

Insert: "14"

18. Page 8, line 30.

Strike: "13"

Insert: "14"

19. Page 9, line 1.

Strike: "13"

Insert: "14"

20. Page 11, line 30.

Strike: "13"

Insert: "14"

21. Page 12, line 3.

Following: "30-14-103"

Insert: "and is subject to the penalty provisions of [section 14]
and the Montana Unfair Trade Practices and Consumer
Protection Act of 1973"

22. Page 12, line 6.

Strike: "13"

Insert: "14"

Following: "telemarketer"

Insert: ", purposely or knowingly,"

23. Page 12, line 23.

Following: "30-14-103"

Insert: "and is subject to to the penalty provisions of [section
14] and the Montana Unfair Trade Practices and Consumer
Protection Act of 1973"

24. Page 12, line 25.

Strike: "-- burden of proof"

25. Page 12, line 26.

Strike: "13"

Insert: "14"

26. Page 13, lines 9 through 11.

Strike: subsection (3) in its entirety

27. Page 13, line 24 and 28.

Strike: "13"

Insert: "14"

28. Page 14, line 1.

Insert: "NEW SECTION. Section 14. Penalties -- misdemeanor

and felony violations -- burden of proof. (1)(a) A person who fails to follow the requirements of [sections 4, 8, 10, 11, or 12] commits the offense of failure to comply with the requirements of [sections 1 through 14]. Except as otherwise provided in [section 11], this offense is specifically intended to be an absolute liability offense as provided for in 45-2-104.

(b) A person convicted of the offense of failure to comply with the requirements of [sections 1 through 14] shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) Upon a second or subsequent conviction for the offense of failure to comply with the requirements of [sections 1 through 14], a person shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(2) (a) A person commits the offense of telemarketing fraud when the person knowingly violates [sections 1 through 14] with the purpose of depriving an owner of property.

(b) A person convicted of the offense of telemarketing fraud in which the value of the property does not exceed \$500 shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) A person convicted of the offense of telemarketing fraud in which the value of the property exceeds \$500 or the person has engaged in telemarketing fraud as part of a common scheme shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) In any criminal proceeding alleging a violation of [sections 1 through 14], the burden of producing evidence to support a defense based on an exemption under [section 5] or an exception from a definition in [section 3] is on the person claiming the exemption or exception."

Renumber: subsequent sections

29. Page 14, lines 19 and 21.

Strike: "13"

Insert: "14"

30. Page 14, line 23.

Strike: "15"

Insert: "16"

31. Page 14, line 25.

Strike: "14"

Insert: "15"



SENATE STANDING COMMITTEE REPORT

January 28, 1999

Page 1 of 5

Mr. President:

We, your committee on **Business and Industry** report that **Senate Bill 27** (first reading copy - white) do pass as amended.

Signed: _____

Senator John Hertel, Chair

And, that such amendments read:

1. Page 1, lines 14, 18, 19, 20, 22, 23, and 29.

Strike: "13"

Insert: "14"

2. Page 1, line 23.

Strike: "(a)"

3. Page 1, line 25.

Strike: "(i)"

Insert: "(a)"

ReNUMBER: subsequent subsections

4. Page 1, line 30 through page 2, line 4.

Strike: subsection (b) in its entirety

5. Page 2, line 6.

Strike: "13"

Insert: "14"

6. Page 3, line 5.

Strike: "commercial"

Committee Vote:

Yes 7, No 0.

221414SC.sjo

7. Page 3, line 8.

Following: "States"

Insert: "or an agency, bureau, or department of government of the United States"

8. Page 3, line 16.

Strike: "-- felony violations"

9. Page 4, lines 21 and 28.

Strike: "13"

Insert: "14"

10. Page 5, line 12.

Strike: "13"

Insert: "14"

11. Page 5, line 17.

Following: "of"

Strike: "[section 8, 10, 11, or 12] or"

12. Page 5, line 18.

Following: "provisions of"

Insert: "[section 14] and"

13. Page 6, line 18.

Following: "2"

Insert: ", or staff members, licensed or unlicensed, of the producer"

14. Page 6, line 19.

Following: "system"

Insert: "or a radio or television station"

15. Page 6, line 22.

Following: "commission"

Insert: ", the federal communications commission, a rural telephone cooperative or its subsidiary or agent,"

16. Page 7, line 26.

Strike: "13"

Insert: "14"

17. Page 8, line 24.

Strike: "13"

Insert: "14"

18. Page 8, line 30.

Strike: "13"

Insert: "14"

19. Page 9, line 1.

Strike: "13"

Insert: "14"

20. Page 11, line 30.

Strike: "13"

Insert: "14"

21. Page 12, line 3.

Following: "30-14-103"

Insert: "and is subject to the penalty provisions of [section 14]
and the Montana Unfair Trade Practices and Consumer
Protection Act of 1973"

22. Page 12, line 6.

Strike: "13"

Insert: "14"

Following: "telemarketer"

Insert: ", purposely or knowingly,"

23. Page 12, line 23.

Following: "30-14-103"

Insert: "and is subject to to the penalty provisions of [section
14] and the Montana Unfair Trade Practices and Consumer
Protection Act of 1973"

24. Page 12, line 25.

Strike: "-- burden of proof"

Page 12, line 26.

Strike: "13"

Insert: "14"

26. Page 13, lines 9 through 11.
Strike: subsection (3) in its entirety

27. Page 13, line 24 and 28.
Strike: "13"
Insert: "14"

28. Page 14, line 1.

Insert: "NEW SECTION. Section 14. Penalties -- misdemeanor

and felony violations -- burden of proof. (1)(a) A person who fails to follow the requirements of [sections 4, 8, 10, 11, or 12] commits the offense of failure to comply with the requirements of [sections 1 through 14]. Except as otherwise provided in [section 11], this offense is specifically intended to be an absolute liability offense as provided for in 45-2-104.

(b) A person convicted of the offense of failure to comply with the requirements of [sections 1 through 14] shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) Upon a second or subsequent conviction for the offense of failure to comply with the requirements of [sections 1 through 14], a person shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(2) (a) A person commits the offense of telemarketing fraud when the person knowingly violates [sections 1 through 14] with the purpose of depriving an owner of property.

(b) A person convicted of the offense of telemarketing fraud in which the value of the property does not exceed \$500 shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) A person convicted of the offense of telemarketing fraud in which the value of the property exceeds \$500 or the person has engaged in telemarketing fraud as part of a common scheme shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) In any criminal proceeding alleging a violation of [sections 1 through 14], the burden of producing evidence to support a defense based on an exemption under [section 5] or an exception from a definition in [section 3] is on the person claiming the exemption or exception."

Number: subsequent sections

Page 14, lines 19 and 21.
Strike: "13"
Insert: "14"

30. Page 14, line 23.

Strike: "15"

Insert: "16"

31. Page 14, line 25.

Strike: "14"

Insert: "15"

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 5, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Jay Stovall (R)

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: ✓ SB 27 SB 189, SB 162, SB 289,
3/3/1999

Executive Action: SB 162, SB 289,

HEARING ON SB 27

Opening Statement by Sponsor: Senator Hertel introduced SB 27.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 126}

Proponents' Testimony: Bill Olson, AARP EXHIBIT(1)

{Tape : 1; Side : A; Approx. Time Counter : 126 - 175}

Geo Bennett, MT Bankers Assn

{Tape : 1; Side : A; Approx. Time Counter : 175 - 198}

Joe Mazurek, MT Attorney General

{Tape : 1; Side : A; Approx. Time Counter : 198 - 226}

Craig Sweet, Mont PRIG

{Tape : 1; Side : A; Approx. Time Counter : 226 - 233}

Vernal Bertelson, MT Senior Citizen Assn.

{Tape : 1; Side : A; Approx. Time Counter : 233 - 254}

Anne Bartos, Dept of Commerce

{Tape : 1; Side : A; Approx. Time Counter : 254 - 264}

Betty Babcock, EXHIBIT(2)

{Tape : 1; Side : A; Approx. Time Counter : 264 - 360}

Margaret Hatcher, EXHIBIT(3)

{Tape : 1; Side : A; Approx. Time Counter : 360 - 440}

Don White Secretary of State

{Tape : 1; Side : A; Approx. Time Counter : 440 - 455}

Ilene Miller EXHIBIT(4)

{Tape : 1; Side : A; Approx. Time Counter : 455 - 500}

Beth O'Halleron, State Auditors

{Tape : 1; Side : B; Approx. Time Counter : 0 - 12}

Bill Clinch, MT Sheriff's and Peace Officers

{Tape : 1; Side : B; Approx. Time Counter : 12 - 29}

Al Pontrelli, Montana Assn of Life Underwriters

{Tape : 1; Side : B; Approx. Time Counter : 29 - 38}

Ross Cannon, Direct Marketing Proponent with amendments
EXHIBIT(5) EXHIBIT(6)

{Tape : 1; Side : B; Approx. Time Counter : 38 - 145}

Brad Griffin, MT Retail Assn. Proponent with amendments.

EXHIBIT(7)

{Tape : 1; Side : B; Approx. Time Counter : 145 - 171}

Opponents' Testimony: None

Questions from Committee Members and Responses: Reps. Bitney, Pavlovich, Juneau, Sliter, Ewer, Krenzler and Simon question witnesses.

{Tape : 1; Side : B; Approx. Time Counter : 171 - 500}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 65}

Closing by Sponsor: Senator Hertel closed

{Tape : 2; Side : A; Approx. Time Counter : 65 - 127}

HEARING ON SB 189

Opening Statement by Sponsor: Senator Berry introduced SB 189

{Tape : 2; Side : A; Approx. Time Counter : 127 - 164}

Proponents' Testimony: John Tabaracci, MT Realtor

{Tape : 2; Side : A; Approx. Time Counter : 164 - 308}

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor: Senator Berry closed

{Tape : 2; Side : A; Approx. Time Counter : 308 - 500}

HEARING ON SB 162

Opening Statement by Sponsor: Senator Crismore introduced SB 162

{Tape : 2; Side : B; Approx. Time Counter : 0 - 6} EXHIBIT(8)

Proponents' Testimony: George Bennett, MT Bankers Assn

{Tape : 2; Side : B; Approx. Time Counter : 6 - 70}

Al Pontrelli, MT Assn of Life Underwriters

{Tape : 2; Side : B; Approx. Time Counter : 70 - 78}

Don Hutchinson, Dept of Commerce, Banking Commissioner

{Tape : 2; Side : B; Approx. Time Counter : 78 - 88}

Beth O'Halleron, State Auditors

{Tape : 2; Side : B; Approx. Time Counter : 88 - 96}

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 8, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Roy Brown (R)

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 304, SB 118, SB 234, SB
117, SB 114,, 3/5/1999

Executive Action: ✓ SB 27, SB 114, SB 118, SB
304, SB 234

Nancy Butler, State Fund

{Tape : 3; Side : B; Approx. Time Counter : 134 - 147}

Opponents' Testimony: None

Questions from Committee Members and Responses: Reps. Bookout, Tuss and Squires questions witnesses.

{Tape : 3; Side : B; Approx. Time Counter : 147 - 213}

Closing by Sponsor: Senator Thomas closed.

{Tape : 3; Side : B; Approx. Time Counter : 213 - 251}

EXECUTIVE ACTION ON SB 27

Motion: REP. SLITER moved that SB 27 BE CONCURRED IN.

{Tape : 3; Side : B; Approx. Time Counter : 251 - 261}

Motion/Vote: REP. SLITER moved that SB 27 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. SLITER moved that SB 27 BE CONCURRED IN AS AMENDED. Motion carried 15-2 with Bitney and Krenzler voting no. Rep. Ahner to carry on house floor.

{Tape : 3; Side : B; Approx. Time Counter : 261 - 334}

EXECUTIVE ACTION ON SB 103

Motion: REP. SQUIRES moved that SB 103 BE CONCURRED IN.

{Tape : 3; Side : B; Approx. Time Counter : 334 - 340}

Motion/Vote: REP. TREXLER moved that SB 103 BE AMENDED. Motion carried 16-1 with Squires voting no.

{Tape : 3; Side : B; Approx. Time Counter : 340 - 458}

Motion: REP. EWER moved that SB 103 BE AMENDED.

{Tape : 3; Side : B; Approx. Time Counter : 458 - 500}

Motion: REP. EWER withdrew motion to amend SB 103.

{Tape : 4; Side : A; Approx. Time Counter : 0 - 31}

Motion: REP. TUSS moved that SB 103 BE AMENDED. Rep. Tuss withdrew motion to amend.

{Tape : 4; Side : A; Approx. Time Counter : 31 - 96}

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 19, 1999 at 8:00 A.M., in Room 312 - 2 Capitol.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Joe Quilici, Vice Chairman (D)
Rep. Steve Vick, Vice Chairman (R)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. Peggy Bergsagel (R)
Rep. Rosalie (Rosie) Buzzas (D)
Rep. John Cobb (R)
Rep. Stan Fisher (R)
Rep. Dick Haines (R)
Rep. Royal Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Red Menahan (D)
Rep. Ray Peck (D)
Rep. Lila Taylor (R)
Rep. Joe Tropila (D)
Rep. John Witt (R)

Members Excused: None.

Members Absent: Rep. Matt McCann (D)

Staff Present: Joanne Gunderson, Committee Secretary
Taryn Purdy, Legislative Fiscal Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Minutes were recorded on a Sony BI-85 machine; references are measured in inches rather than minutes.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 664, SB 81, SB 27, 3/16/1999
Executive Action: HB 238, HB 664, HB 252, HB 131, HB 653,
HB 490, HB 644, HB 431, HB 14

Discussion:

{Tape : 3; Side : A; Approx. Time Counter : 435 - Side : B;
Approx. Time Counter : 68}

Vote: Motion failed 9-9 with Barnhart, Buzzas, Cobb, Haines, McCann, Menahan, Peck, Quilici and Tropila voting no.

Motion: REP. KASTEN moved that HB313 DO PASS.

Discussion: The motion was withdrawn. Action on this bill was postponed.

{Tape : 3; Side : B; Approx. Time Counter : 68 - 107}

Discussion: Subcommittee report was given on the Jobs and Income bills, HB 238 and HB 252.

{Tape : 3; Side : B; Approx. Time Counter : 107 - 224}

EXECUTIVE ACTION ON HB 238

Motion: REP. E. BERGSAGEL moved that HB 238 BE TABLED.

Discussion:

{Tape : 3; Side : B; Approx. Time Counter : 224 - 394}EXHIBIT(17)

Vote: Motion carried 16-2 with Haines and Taylor voting no.

Discussion:

{Tape : 3; Side : B; Approx. Time Counter : 394 - Tape : 4; Side : A; Approx. Time Counter : 57: Comments : Continued discussion about the coordination of HBs 238, 252 and HB 2. The committee recessed until 3:15PM.}

HEARING ON SB 27

Opening Statement by Sponsor:

Sen. John Hertel, SD 47, presented SB 27.

{Tape : 4; Side : A; Approx. Time Counter : 57 - 124}

Proponents' Testimony:

Annie Bartos, Chief Legal Counsel, Department of Commerce.

{Tape : 4; Side : A; Approx. Time Counter : 124 - 194}EXHIBIT(18)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape : 4; Side : A; Approx. Time Counter : 194 - 290}

Closing by Sponsor:

{Tape : 4; Side : A; Approx. Time Counter : 290 - 327}

EXECUTIVE ACTION ON HB 653

Motion: REP. E. BERGSAGEL moved that HB 653 DO PASS.

Motion/Vote: REP. E. BERGSAGEL moved that HB 653 BE AMENDED.

Motion carried unanimously.

EXHIBIT(19)

{Tape : 4; Side : A; Approx. Time Counter : 327 - Side : B;

Approx. Time Counter : 30}

Motion: REP. E. BERGSAGEL moved that HB 653 DO PASS AS AMENDED.

Discussion:

{Tape : 4; Side : B; Approx. Time Counter : 30 - 68; Comments :

Rep. E. Bergsagel withdrew the motion. Further action was postponed.}

EXECUTIVE ACTION ON HB 313

Motion: REP. BUZZAS moved that HB 313 DO PASS.

Motion: REP. BUZZAS moved that HB 313 BE AMENDED.

EXHIBIT(20)

EXHIBIT(21)

Discussion:

{Tape : 4; Side : B; Approx. Time Counter : 68 - 140; Comments :
Further action on HB 313 was suspended without objection.}

EXECUTIVE ACTION ON HB 664

Discussion:

HB 664 was discussed and amendments were proposed. The committee was polled regarding its intent regarding HB 313.

{Tape : 4; Side : B; Approx. Time Counter : 140 - 381}

EXECUTIVE ACTION ON HB 252

Motion: REP. TROPILA moved that HB 252 BE RECONSIDERED.



**MONTANA
DEPARTMENT OF COMMERCE**

Director's Office
1424 9th Avenue PO Box 200501
Helena, MT 59620-0501

EXHIBIT 18
DATE 3/19/99
SB 27

Phone: (406) 444-3494
FAX: (406) 444-2903
TDD: (406) 444-2978

MONTANA DEPARTMENT OF COMMERCE

CONSUMER AFFAIRS OFFICE

- Consumer Affairs Office recovered \$782,595.65 for Montana citizens in 1997-1998.
- Consumer Affairs Office received 3000 written and oral complaints in 1997-1998.
- Consumer Affairs Office opened 2495 complaints on behalf of Montana consumers in 1997-1998.
- Consumer Affairs Office educates Montana citizens and Montana youth about consumer protection laws.

Exhibit # 18
From Annie Barts
The full exhibit is available from:
Montana Historical Society Archives,
225 North Roberts *Folder full of*
PO Box 201201 *stuff*
Helena, MT 59602-1201
Phone: (406) 444-4775

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 23, 1999 at 8:00 A.M., in Room 312 - 2 Capitol.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Joe Quilici, Vice Chairman (D)
Rep. Steve Vick, Vice Chairman (R)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. Peggy Bergsagel (R)
Rep. Rosalie (Rosie) Buzzas (D)
Rep. John Cobb (R)
Rep. Stan Fisher (R)
Rep. Dick Haines (R)
Rep. Royal Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. Red Menahan (D)
Rep. Ray Peck (D)
Rep. Lila Taylor (R)
Rep. Joe Tropila (D)
Rep. John Witt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Joanne Gunderson, Committee Secretary
Taryn Purdy, Legislative Fiscal Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Minutes were recorded on a Sony BI-85 machine, references are measured in inches rather than minutes.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 220, SB 302, 3/16/1999
Executive Action: SB 27, SB 81, SB 224, SB 349

Allen Bunk, Vice Chairman, DPRW

EXHIBIT(9)

Tape : 1; Side : B; Approx. Time Counter : 191 - 283 EXHIBIT(10)

Comments: Exhibit 10 was offered without testimony.}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 283 - Tape : 2; Side : B; Approx. Time Counter : 272}

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 272 - 332}

EXECUTIVE ACTION ON SB 27

Motion: REP. E. BERGSAGEL moved that SB 27 BE CONCURRED IN.

Discussion:

{Tape : 2; Side : B; Approx. Time Counter : 332 - 390; Comments :

Rep. E. Bergsagel withdrew the motion.}

{Tape : 2; Side : B; Approx. Time Counter : 390 - 394}

EXECUTIVE ACTION ON SB 81

Motion: REP. E. BERGSAGEL moved that SB 81 BE CONCURRED IN.

{Tape : 2; Side : B; Approx. Time Counter : 394 - 397; Comments :

Rep. E. Bergsagel withdrew the motion.}

EXECUTIVE ACTION ON SB 224

Motion: REP. E. BERGSAGEL moved that SB 224 BE CONCURRED IN.

Discussion:

{Tape : 2; Side : B; Approx. Time Counter : 397 - Tape : 3; Side : B; Approx. Time Counter : 156}

Substitute Motion: REP. E. BERGSAGEL made a substitute motion that SB 224 BE TABLED.

Discussion:

{Tape : 3; Side : A; Approx. Time Counter : 156 - 175}

SENATE BILL NO. 27

INTRODUCED BY J. HERTEL, C. AHNER, J. ANDERSEN, S. ANDERSON, B. BARNHART, S. BARTLETT,
J. BOHLINGER, S. BOOKOUT-REINICKE, M. BRAINARD, R. BROWN, C. CHRISTIAENS, E. CLARK,
P. CLARK, B. CRIPPEN, T. DELL, S. DOHERTY, D. ECK, J. ELLINGSON, A. ELLIS, D. EWER,
S. GALLUS, K. GILLAN, G. GOLIE, M. GUGGENHEIM, G. GUTSCHE, T. HAGENER, D. HARGROVE,
J. HARP, H. HARPER, D. HARRINGTON, D. HEDGES, C. HIBBARD, J. HURDLE, C. JUNEAU,
T. KEATING, S. KITZENBERG, B. LAWSON, R. LENHART, M. LINDEEN, J. LYNCH, D. MAHLUM,
G. MASOLO, B. MCCARTHY, L. MCCULLOCH, W. MCNUTT, R. MENAHAN, J. MERCER, D. MOOD,
K. OHS, B. PAVLOVICH, R. PECK, J. QUILICI, B. RANEY, B. REHBEIN, T. SCHMIDT, D. SHEA,
B. SIMON, F. SMITH, C. SQUIRES, E. SWANSON, B. TASH, J. TROPILA, M. WATERMAN,
C. WILLIAMS, C. YOUNKIN

**THERE ARE NO CHANGES IN THIS BILL AND
IT WILL NOT BE REPRINTED. PLEASE REFER TO
2ND RD--2ND HOUSE COPY (TAN) FOR COMPLETE TEXT.**

APPROVED BY COMMITTEE
ON BUSINESS & LABOR

SENATE BILL NO. 27

INTRODUCED BY J. HERTEL, C. AHNER, J. ANDERSEN, S. ANDERSON, B. BARNHART, S. BARTLETT,
J. BOHLINGER, S. BOOKOUT-REINICKE, M. BRAINARD, R. BROWN, C. CHRISTIAENS, E. CLARK,
P. CLARK, B. CRIPPEN, T. DELL, S. DOHERTY, D. ECK, J. ELLINGSON, A. ELLIS, D. EWER,
S. GALLUS, K. GILLAN, G. GOLIE, M. GUGGENHEIM, G. GUTSCHE, T. HAGENER, D. HARGROVE,
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K. OHS, B. PAVLOVICH, R. PECK, J. QUILICI, B. RANEY, B. REHBEIN, T. SCHMIDT, D. SHEA,
B. SIMON, F. SMITH, C. SQUIRES, E. SWANSON, B. TASH, J. TROPILA, M. WATERMAN,
C. WILLIAMS, C. YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA TELEMARKETING
REGISTRATION AND FRAUD PREVENTION ACT; REQUIRING TELEMARKETERS TO REGISTER WITH THE
STATE, POST A BOND, AND PROVIDE CERTAIN INFORMATION TO CONSUMERS; ESTABLISHING A
TELEMARKETING FRAUD CONSUMER AWARENESS PROGRAM; PROVIDING CIVIL AND CRIMINAL
PENALTIES FOR TELEMARKETING FRAUD; INCREASING THE CIVIL FINES FOR UNLAWFUL, UNFAIR, OR
DECEPTIVE ACTS OR PRACTICES; AMENDING SECTION 30-14-142, MCA; AND PROVIDING EFFECTIVE
DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through ~~43~~ 14] may be cited as the "Montana
Telemarketing Registration and Fraud Prevention Act".

NEW SECTION. Section 2. Purpose -- scope -- rulemaking. (1) The purposes of [sections 1
through ~~43~~ 14] are to require telemarketers to register in this state, to establish standards of conduct for
telemarketers, and to provide penalties for violations of [sections 1 through ~~43~~ 14].

(2) [Sections 1 through ~~43~~ 14] do not apply to any claim brought by a person under Title 30,
chapter 14, part 5, and the provisions of Title 30, chapter 14, part 5, do not apply to any claim brought

1 by a person pursuant to the provisions of [sections 1 through ~~13~~ 14].

2 (3) ~~(a)~~ The department shall adopt rules to implement the provisions of [sections 1 through ~~13~~
3 14]. The rules must include but are not limited to rules:

4 ~~(i)~~ (A) establishing forms and procedures for registration, registration renewal, and bonding of
5 sellers or telemarketers;

6 ~~(ii)~~ (B) for administering a telemarketing fraud consumer awareness program; and

7 ~~(iii)~~ (C) ensuring that proper procedures are in place for maintaining civil and criminal actions for
8 violations of [sections 1 through ~~13~~ 14].

9 ~~_____ (b) The office of the attorney general shall adopt rules to implement the provisions of [sections~~
10 ~~1 through 13]. The rules must include but are not limited to rules:~~

11 ~~_____ (i) for administering a telemarketing fraud consumer awareness program; and~~

12 ~~_____ (ii) ensuring that proper procedures are in place for maintaining civil and criminal actions for~~
13 ~~violations of [sections 1 through 13].~~

14
15 NEW SECTION. Section 3. Definitions. As used in [sections 1 through ~~13~~ 14], the following
16 definitions apply:

17 (1) "Consumer" means a person who is or may be required to pay for goods or services offered
18 by a seller or telemarketer through telemarketing.

19 (2) "Department" means the department of commerce created in 2-15-1801.

20 (3) "Goods or services" means any real property, any tangible or intangible personal property, or
21 services of any kind provided or offered to a person.

22 (4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding
23 goods or services. The term includes currency values and comparative expressions of value, including but
24 not limited to percentages or multiples.

25 (5) "Person" means a natural person, corporation, trust, partnership, incorporated or
26 unincorporated association, or other legal entity.

27 (6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person
28 by chance.

29 (7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written
30 representation, express or implied, that a person has won, has been selected to receive, or is eligible to

1 receive a prize or purported prize.

2 (8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers
3 to provide, or arranges for others to provide goods or services to the consumer in exchange for
4 consideration.

5 (9) "Solicitation" means a written or oral notification or advertisement that:

6 (a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video,
7 cinematic, telephonic, or electronic means to a consumer; and

8 (b) in the case of a notification or advertisement other than by telephone, either of the following
9 conditions is met:

10 (i) the notification or advertisement is followed by a telephone call from a seller or telemarketer;

11 or

12 (ii) the notification or advertisement induces a response by telephone and, through that response,
13 a seller or telemarketer attempts to make a sale of goods or services.

14 (10) "Supervised financial organization" means any ~~commercial~~ bank, trust company, savings and
15 loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender,
16 commercial finance lender, or insurer, provided that the organization is subject to supervision by an
17 agency of this or any other state of the United States OR AN AGENCY, BUREAU, OR DEPARTMENT OF
18 GOVERNMENT OF THE UNITED STATES.

19 (11) "Telemarketer" means a person, located within or outside of this state, who in connection
20 with telemarketing initiates or receives telephone calls to or from a consumer in this state. The term
21 includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in
22 telemarketing at the direction of a seller.

23 (12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to
24 induce the purchase of goods or services and that involves more than one telephone call to a consumer.

25
26 NEW SECTION. Section 4. Registration of sellers or telemarketers ~~—felony violations.~~ (1) (a)
27 Unless exempt under [section 5], a person may not act as a seller or telemarketer without first having
28 registered with the department.

29 (b) The initial application for registration must be approved by the department prior to a seller or
30 telemarketer offering or offering for sale consumer goods or services through any medium.

1 (c) A registered seller or telemarketer shall submit an application for renewal of registration
2 annually to the department.

3 (d) The application for a certificate of registration or renewal must include but is not limited to the
4 following information:

5 (i) the true name, current address, telephone number, and location of the seller or telemarketer,
6 including each name under which the seller or telemarketer intends to engage in telemarketing;

7 (ii) each occupation or business that the seller's or telemarketer's principal owner has engaged
8 in for the 2 years immediately preceding the date of the application;

9 (iii) whether any principal or manager has been convicted or pleaded guilty to or is being
10 prosecuted by indictment for racketeering, violations of state or federal securities laws, or a theft offense;

11 (iv) whether there has been entered against any principal or manager an injunction, a temporary
12 restraining order, or a final judgment in any civil or administrative action involving fraud, theft,
13 racketeering, embezzlement, fraudulent conversion, misappropriation of property, or violation of any
14 federal or state consumer protection law. The information must include any pending litigation against the
15 applicant.

16 (v) whether the seller, at any time during the previous 7 years, has filed for bankruptcy, been
17 adjudged bankrupt, or been reorganized because of insolvency;

18 (vi) the true name, current home address, date of birth, social security number, and all other
19 names of the following:

20 (A) each telemarketer or other person to be employed by the seller;

21 (B) each person participating in or responsible for the management of the seller's business; and

22 (C) each person, office manager, or supervisor principally responsible for the management of the
23 seller's business;

24 (vii) the name, address, and account number of every institution where banking or any other
25 monetary transactions are conducted by the seller; and

26 (viii) a copy of all scripts, outlines, or presentation material that the seller will require a
27 telemarketer to use when soliciting, as well as all sales information to be provided by the seller to a
28 purchaser in connection with any solicitation.

29 (2) (a) The application for registration or renewal must be accompanied by a surety bond in the
30 amount of \$50,000. The bond must provide for the indemnification of TO THE STATE OF MONTANA FOR any

1 person suffering a loss as the result of violation of [sections 1 through ~~43~~ 14].

2 (b) The surety may for any cause cancel the bond upon giving a 60-day written notice by certified
3 mail to the applicant and to the department. Unless the bond is replaced by that of another surety before
4 the expiration of the 60-day notice of cancellation, the registration of the seller or telemarketer must be
5 treated as lapsed.

6 (c) The surety bond must remain in effect for ~~3-years~~ 1 YEAR from the period the telemarketing
7 business ceases to operate in this state.

8 (d) (i) Any business required under [sections 1 through ~~43~~ 14] to file a bond with a registration
9 application may file, in lieu of the bond, a certificate of deposit, cash, or a government bond in the
10 amount of \$50,000.

11 (ii) The department shall hold the cash, certificate of deposit, or government bond for ~~3-years~~ 1
12 YEAR from the period the telemarketing business ceases to operate in this state or registration lapses in
13 order to pay claims made against the telemarketing business for its activities during its period of operation
14 in this state.

15 (iii) For the purposes of this section, "government bond" means any United States bond, treasury
16 note, or other public debt obligation of the United States that is unconditionally guaranteed as to both
17 interest and principal by the United States.

18 (e) The registration of a telemarketing business must be treated as lapsed if at any time the
19 amount of the bond, cash, certificate of deposit, or government bond falls below the amount required by
20 this section.

21 (f) The aggregate liability of the surety company to THE STATE OF MONTANA FOR all persons injured
22 by a seller's or telemarketer's violations may not exceed the amount of the bond.

23 (3) The following constitute a violation of [sections 1 through ~~43~~ 14]:

24 (a) failure to register, maintain, or renew a registration if required;

25 (b) failure to meet the surety bond requirement if required to provide a bond;

26 (c) including any false or misleading information on a registration application; and

27 (d) misrepresenting that a seller or telemarketer is registered.

28 (4) A violation of ~~[section 8, 10, 11, or 12]~~ or subsection (3) of this section also constitutes a
29 violation of 30-14-103 and is subject to the penalty provisions of [SECTION 14] AND the Montana Unfair
30 Trade Practices and Consumer Protection Act of 1973.

1
2 NEW SECTION. Section 5. Exemptions from registration and bonding. The registration and
3 bonding requirements of [section 4] do not apply to:

4 (1) any securities, commodities, or investment brokers, dealers, or investment advisers or any
5 associates of securities, commodities, or investment brokers, dealers, or investment advisers who are
6 subject to licensure or registration by the securities and exchange commission, the national association
7 of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an
8 agency of this state or any other state and who are soliciting within the scope of their license or
9 registration;

10 (2) a person engaged in solicitation for a religious, charitable, political, educational, or other
11 noncommercial purpose or a person soliciting for a domestic or foreign nonprofit corporation that is
12 registered with the Montana secretary of state;

13 (3) a business-to-business sale;

14 (4) a person that solicits sales by periodically publishing and delivering a catalog of the person's
15 merchandise to prospective purchasers, if the catalog:

16 (a) contains a written description or illustration of each item offered for sale;

17 (b) includes the business or home address of the person soliciting the sale;

18 (c) includes at least 20 pages of written material and illustrations;

19 (d) is distributed in more than one state; and

20 (e) has a circulation by mailing of not less than 150,000;

21 (5) a person who solicits contracts for maintenance or repair of goods previously purchased from
22 that person or from the person on whose behalf the solicitation is made;

23 (6) a person soliciting a transaction regulated by the commodity futures trading commission if the
24 person is registered or temporarily licensed with the commodity futures trading commission under the
25 Commodity Exchange Act, Title 7, chapter 1, of the United States Code, and the person's registration
26 or license is not expired, suspended, or revoked;

27 (7) a supervised financial organization or parent, subsidiary, or affiliate of a supervised financial
28 organization;

29 (8) AN INSURER AUTHORIZED TO TRANSACT INSURANCE UNDER TITLE 33, CHAPTER 2, PART 1, a person
30 licensed as an insurance producer under Title 33, chapter 17, part 2, OR STAFF MEMBERS, LICENSED OR

1 UNLICENSED, OF THE PRODUCER;

2 (9) a person soliciting the sale of services provided by a satellite or cable television system OR A
3 RADIO OR TELEVISION STATION authorized by the federal government or this state to provide services in this
4 state;

5 (10) a telephone company or its subsidiary or agent or other business regulated by the Montana
6 public service commission, THE FEDERAL COMMUNICATIONS COMMISSION, A RURAL TELEPHONE COOPERATIVE OR
7 ITS SUBSIDIARY OR AGENT, or a federally licensed cellular telephone or radio telecommunication service
8 provider;

9 (11) a person soliciting business from consumers that have an existing business relationship with
10 or have previously purchased from the business enterprise for which the person is soliciting;

11 (12) a person operating a retail business establishment under the same name as that used in the
12 solicitation and:

13 (a) the products or services are displayed and offered for sale at the business establishment; and

14 (b) a majority of the person's business involves the consumer obtaining the products or services
15 at the business establishment;

16 (13) a person soliciting for the sale of a magazine or newspaper of general circulation;

17 (14) an issuer or a subsidiary of an issuer that is authorized to offer securities for sale in this state;

18 (15) a book, video, record, or multimedia club, contractual plan, or arrangement:

19 (a) under which the seller provides the consumer with a form that the consumer may use to
20 instruct the seller not to ship the offered merchandise;

21 (b) that is regulated by the federal trade commission regulation, 16 CFR 425, concerning the use
22 of negative option plans by sellers in commerce; or

23 (c) that provides for the sale of books, videos, records, multimedia products, or other goods that
24 are not covered by subsection (15)(a) or (15)(b), including continuity plans, subscription arrangements,
25 standing order arrangements, single sales, supplements, or series arrangements under which the seller
26 periodically ships merchandise to a consumer who has consented in advance to receive the merchandise
27 on a periodic basis;

28 (16) a real estate salesperson or broker licensed by this state;

29 (17) a person that has provided telemarketing sales services under the same name and derives
30 50% of gross telemarketing sales revenue from contracts with persons exempted under this section from

1 registration requirements;

2 (18) a person soliciting the sale of food or food products if the solicitation is not intended to and
3 does not result in a sale in excess of \$100 to a single address.

4
5 **NEW SECTION.** Section 6. Telemarketing fraud consumer awareness program. The department
6 shall establish and administer a telemarketing fraud consumer awareness program. The program must
7 be funded as provided in [section 7(2)].

8
9 **NEW SECTION.** Section 7. Authority of department, attorney general, and county attorney. (1)
10 The department, the attorney general, and a county attorney have the same authority in enforcing and
11 carrying out the provisions of [sections 1 through ~~43~~ 14] as they have under Title 30, chapter 14, part
12 1.

13 (2) All civil fines, costs, and fees received or recovered by the department pursuant to this section
14 must be deposited into the state special revenue account to the credit of the department and must be
15 used to defray the expenses of the department in discharging its administrative and regulatory powers
16 and duties in relation to this section and to fund the telemarketing fraud consumer awareness program
17 established in [section 5]. Any excess civil fines, costs, or fees must be deposited in the general fund.

18 (3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this
19 section must be deposited into the state special revenue account to the credit of the attorney general and
20 must be used to defray the expenses of the office of the attorney general in discharging its duties in
21 relation to this section and to establish a telemarketing fraud consumer awareness program similar to the
22 program authorized in [section 5]. Any excess civil fines, costs, or fees must be deposited in the general
23 fund.

24 (4) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the
25 general fund of the county where the action was commenced.

26
27 **NEW SECTION.** Section 8. Recordkeeping requirements. (1) (a) A telemarketer shall keep records
28 subject to this section for a period of 24 months from the date the record is produced.

29 (b) The records that must be kept for the 24-month period include:

30 (i) all substantially different advertising, brochures, telemarketing scripts, and promotional

1 materials;

2 (ii) the name and last-known address of each prize recipient and the prize awarded;

3 (iii) the name and last-known address of each consumer, the goods or services purchased, the
4 date the goods or services were shipped or provided, the amount of goods or services provided, and the
5 amount paid by the consumer for the goods or services;

6 (iv) the name, any fictitious name used, the last-known home address and telephone number, and
7 the job title for all current and former employees directly involved in telephone sales; however, if the seller
8 or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable
9 to only one specific employee; and

10 (v) all written authorizations required to be provided or received under [sections 1 through ~~43~~ 14].

11 (2) In the event of any dissolution or termination of a telemarketer's business, the principal of that
12 telemarketer shall maintain all records as required under this section. In the event of any sale, assignment,
13 or other change in ownership of the seller's business, the successor shall maintain all records required
14 under this section.

15
16 **NEW SECTION.** Section 9. Acts and practices not governed by [sections 1 through ~~43~~ 14]. The
17 following acts and practices are not subject to the provisions of [sections 1 through ~~43~~ 14]:

18 (1) telephone calls in which the sale of goods or services is not completed and payment or
19 authorization of payment is not required until after a face-to-face sales presentation by the seller or
20 telemarketer; and

21 (2) telephone calls initiated by a consumer that are not the result of any solicitation by a seller
22 or telemarketer.

23
24 **NEW SECTION.** Section 10. Disclosure and contract requirements. (1) When contacting a
25 consumer, a seller or telemarketer shall promptly disclose in a clear and conspicuous manner the
26 following:

27 (a) the identity of the seller or telemarketer;

28 (b) that the purpose of the call is to sell goods or services;

29 (c) the nature of the goods or services; and

30 (d) that a purchase or payment is not necessary to be able to win a prize or participate in a prize

1 promotion.

2 (2) Prior to requesting any payment from the consumer a seller or telemarketer shall disclose in
3 a clear and conspicuous manner the following information:

4 (a) the total cost of the goods or services;

5 (b) all material restrictions, limitations, and conditions pertaining to the purchase of the goods or
6 services;

7 (c) in any prize promotion:

8 (i) the odds of being able to receive the prize or, if the odds are not calculable in advance, the
9 factors used in calculating the odds; and

10 (ii) the "no-purchase no-payment" method of participating in the prize promotion with either
11 instructions on how to participate or an address or a local or toll-free telephone number that consumers
12 may write or call for information on how to participate.

13 (3) A seller or telemarketer may not misrepresent, directly or by implication, any of the following
14 information:

15 (a) any material aspect of performance, effectiveness, nature, or basic characteristics of goods
16 or services;

17 (b) any material aspect of the nature or terms of the seller's or telemarketer's refund,
18 cancellation, exchange, or repurchase policies; or

19 (c) any material aspect of a prize promotion, including but not limited to the nature or value of
20 the prize or that a purchase or payment is required to win a prize or to participate in a prize promotion.

21 (4) (a) Except as provided in subsection (6), in addition to any other right to revoke an offer, in
22 the case of a sale made by telephone, the buyer may cancel the sale at any time prior to signing an
23 agreement or offer to purchase the goods or services.

24 (b) Cancellation occurs:

25 (i) when written notice of cancellation is given to the seller or telemarketer; or

26 (ii) when written notice of cancellation, properly addressed and with postage prepaid, is deposited
27 in the mail.

28 (c) A notice of cancellation does not have to be in the form prescribed by the seller or
29 telemarketer if it indicates the intention of the buyer to cancel the sale of goods or services.

30 (d) In the case of goods, a telemarketing sale may not be canceled if the goods cannot be

1 returned to the seller or telemarketer in substantially the same condition as when received by the buyer.

2 (5) (a) Except as provided in subsection (6), a telemarketing sale may not be considered final until
3 the purchaser receives the notice required by subsection (5)(b).

4 (b) A seller or telemarketer shall furnish the purchaser, in the same language as that principally
5 used in the sales presentation, a written notice, in not less than 10-point boldface type, containing a
6 statement in substantially the following form:

7 "You, the purchaser, may cancel this transaction without any penalty or obligation at any time
8 prior to midnight of the third business day after receipt of this notice. If you cancel, any payments made
9 by you under the sale will be returned within 10 business days of the day your written notice of
10 cancellation is received by the seller and any security interest connected to this transaction will be
11 canceled.

12 If you cancel, you must make available to the seller at your residence, in substantially as good
13 condition as when received, any goods delivered to you under this sales contract; or you may, if you wish,
14 comply with the seller's instructions regarding returning the goods at the seller's expense and risk.

15 If you do make the goods available to the seller and the seller does not pick up the goods within
16 20 days of the date of your notice of cancellation or if the seller does not agree to assume the expense
17 and risk of the return of the goods to the seller, you may retain or dispose of the goods without any
18 further obligation. If you fail to make the goods available to the seller or if you agree to return the goods
19 to the seller and fail to return the goods, then you remain liable for the performance of all your obligations
20 under the sales contract.

21 To cancel this transaction, mail, deliver, or telegram a written notice of cancellation to (name of
22 seller) at the following address (address of the seller)."

23 (c) In addition to the notice required in subsection (5)(b), the seller or telemarketer shall furnish
24 the purchaser with:

25 (i) the seller's or telemarketer's name and the name of the person to whom a notice of
26 cancellation is to be given if different from the seller's or telemarketer's name;

27 (ii) the legal name of the company for whom the seller or telemarketer is soliciting;

28 (iii) the seller's or telemarketer's street address and telephone number; and

29 (iv) the date and a description of the telephone solicitation.

30 (6) A sale is not subject to the requirements of subsections (4) and (5) if the seller or

1 telemarketer, at a minimum, has a policy of:

2 (a) accepting returns or canceling services in connection with the return of unused and
3 undamaged goods or canceled services for a period of not less than 7 days after the date of delivery to
4 the consumer and providing a cash refund for a cash purchase or issuing a credit for a credit purchase
5 applied to the account that was debited;

6 (b) disclosing the seller's or telemarketer's refund and return policy to the consumer by telephone
7 or in written material included with advertising or promotional material or with the delivery of the goods
8 or services; and

9 (c) restoring payments or issuing credits pursuant to subsection (6)(a) within 30 days after the
10 date on which the seller or telemarketer receives the returned goods or notice of cancellation of services.
11 A seller or telemarketer who discloses in writing that a sale is subject to "satisfaction guaranteed", "free
12 inspection", "a no-risk guarantee", or similar words or phrases must be considered to have met the review
13 and return for refund policy requirements of this subsection.

14 (7) It is an unfair and deceptive act or practice to fail to comply with or to misrepresent the
15 requirements of this section.

16 (8) In addition to subsection (7), it is a violation of [sections 1 through ~~13~~ 14] for any seller or
17 telemarketer to engage in any other unfair or deceptive conduct that would create a likelihood of
18 confusion or misunderstanding to any reasonable consumer.

19 (9) Failure to comply with the provisions of this section is a violation of 30-14-103 AND IS SUBJECT
20 TO THE PENALTY PROVISIONS OF [SECTION 14] AND THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER
21 PROTECTION ACT OF 1973.

22
23 NEW SECTION. Section 11. Prohibited acts and practices. (1) It is a violation of [sections 1
24 through ~~13~~ 14] for a seller or telemarketer, PURPOSELY OR KNOWINGLY, to engage in the following conduct:

25 (a) advertise or represent that registration as a seller or telemarketer equals an endorsement or
26 approval by the state or any political subdivision of the state;

27 (b) assist, support, or provide substantial assistance to any telemarketer when the seller knew
28 or should have known that the telemarketer was engaged in any act or practice violating [section 8] or
29 this section;

30 (c) request a fee in advance to remove derogatory information from or improve a person's credit

1 history or credit record;

2 (d) request or receive payment in advance from a person to recover or otherwise aid in the return
3 of money or any other item lost by the person in a prior telemarketing transaction; however, this
4 subsection does not apply to services rendered to a person by a licensed attorney;

5 (e) obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a
6 person's checking, savings, bond, or other account without the person's express written authorization;
7 or

8 (f) procure the services of any professional delivery, courier, or other pickup service to obtain
9 immediate receipt or possession of a person's payment unless the goods are delivered with the
10 opportunity to inspect them before any payment is collected.

11 (2) Failure to comply with the provisions of subsection (1) constitutes a violation of 30-14-103
12 AND IS SUBJECT TO THE PENALTY PROVISIONS OF [SECTION 14] AND THE MONTANA UNFAIR TRADE PRACTICES AND
13 CONSUMER PROTECTION ACT OF 1973.
14

15 NEW SECTION. Section 12. Abusive acts and practices ~~—burden of proof.~~ (1) It is an abusive
16 telemarketing act or practice and a violation of [sections 1 through ~~43~~ 14] for any seller or telemarketer
17 to engage in the following conduct:

18 (a) use threatening, intimidating, or profane or obscene language;

19 (b) engage any person repeatedly or continuously with behavior a reasonable person would
20 consider annoying, abusive, or harassing;

21 (c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR
22 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or
23 telemarketer;

24 (d) engage in telemarketing to a person's residence at any time other than between 8 a.m. and
25 9 p.m. local time at the called person's location; or

26 (e) engage in any other conduct that would be considered abusive to any reasonable consumer.

27 (2) The department or the attorney general may seek injunctive or declaratory relief or any other
28 remedy provided in Title 30, chapter 14, part 1, for any violations of this section.

29 ~~—(3) In any criminal proceeding alleging a violation of [sections 1 through 13], the burden of~~
30 ~~producing evidence to support a defense based on an exemption under [section 5] or an exception from~~

1 ~~a definition in [section 3] is on the person claiming the exemption or exception.~~

2
3 NEW SECTION. Section 13. Civil remedies -- venue -- burden of proof. (1) The sale of any goods
4 or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining
5 a judgment for damages, attorney fees, or costs against a seller or telemarketer pursuant to this section
6 has the right to be reimbursed for those damages, attorney fees, or costs from any bond or security
7 posted by the seller or telemarketer pursuant to the provisions of [section 4].

8 (2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or
9 a prohibited act or practice is entitled to recover actual damages or \$500, whichever is greater, attorney
10 fees, court costs, and any other remedies provided by law.

11 (3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result
12 of an abusive act or practice is entitled to receive injunctive or declaratory relief.

13 (4) (a) The department, the attorney general, or a county attorney, on behalf of state residents
14 who have suffered a loss or harm as a result of a violation of [sections 1 through ~~43~~ 14], may seek any
15 remedy provided by Title 30, chapter 14, part 1.

16 (b) The proper place for trial for an action based on a claim of a violation of [sections 1 through
17 ~~43~~ 14] is the district court of Lewis and Clark County or the county in which the alleged violation
18 occurred.

19 (5) In a civil proceeding alleging a violation of [sections 1 through ~~43~~ 14], the burden of proving
20 an exemption under [section 5] or an exception to a definition contained in [section 3] is on the person
21 claiming the exemption or exception.

22
23 NEW SECTION. SECTION 14. PENALTIES -- MISDEMEANOR AND FELONY VIOLATIONS -- BURDEN OF PROOF.

24 (1) (A) A PERSON WHO FAILS TO FOLLOW THE REQUIREMENTS OF [SECTIONS 4, 8, 10, 11, OR 12] COMMITS THE
25 OFFENSE OF FAILURE TO COMPLY WITH THE REQUIREMENTS OF [SECTIONS 1 THROUGH 14]. EXCEPT AS OTHERWISE
26 PROVIDED IN [SECTION 11], THIS OFFENSE IS SPECIFICALLY INTENDED TO BE AN ABSOLUTE LIABILITY OFFENSE AS
27 PROVIDED FOR IN 45-2-104.

28 (B) A PERSON CONVICTED OF THE OFFENSE OF FAILURE TO COMPLY WITH THE REQUIREMENTS OF [SECTIONS
29 1 THROUGH 14] SHALL BE FINED NOT TO EXCEED \$500 OR BE IMPRISONED IN THE COUNTY JAIL FOR A TERM NOT TO
30 EXCEED 6 MONTHS, OR BOTH.

1 (C) UPON A SECOND OR SUBSEQUENT CONVICTION FOR THE OFFENSE OF FAILURE TO COMPLY WITH THE
2 REQUIREMENTS OF [SECTIONS 1 THROUGH 14], A PERSON SHALL BE FINED NOT TO EXCEED \$50,000 OR BE IMPRISONED
3 IN THE STATE PRISON FOR A TERM NOT TO EXCEED 5 YEARS, OR BOTH.

4 (2) (A) A PERSON COMMITS THE OFFENSE OF TELEMARKETING FRAUD WHEN THE PERSON KNOWINGLY VIOLATES
5 [SECTIONS 1 THROUGH 14] WITH THE PURPOSE OF DEPRIVING AN OWNER OF PROPERTY.

6 (B) A PERSON CONVICTED OF THE OFFENSE OF TELEMARKETING FRAUD IN WHICH THE VALUE OF THE PROPERTY
7 DOES NOT EXCEED \$500 SHALL BE FINED NOT TO EXCEED \$500 OR BE IMPRISONED IN THE COUNTY JAIL FOR A TERM
8 NOT TO EXCEED 6 MONTHS, OR BOTH.

9 (C) A PERSON CONVICTED OF THE OFFENSE OF TELEMARKETING FRAUD IN WHICH THE VALUE OF THE PROPERTY
10 EXCEEDS \$500 OR THE PERSON HAS ENGAGED IN TELEMARKETING FRAUD AS PART OF A COMMON SCHEME SHALL BE
11 FINED NOT TO EXCEED \$50,000 OR BE IMPRISONED IN THE STATE PRISON FOR A TERM NOT TO EXCEED 10 YEARS, OR
12 BOTH.

13 (3) IN ANY CRIMINAL PROCEEDING ALLEGING A VIOLATION OF [SECTIONS 1 THROUGH 14], THE BURDEN OF
14 PRODUCING EVIDENCE TO SUPPORT A DEFENSE BASED ON AN EXEMPTION UNDER [SECTION 5] OR AN EXCEPTION FROM
15 A DEFINITION IN [SECTION 3] IS ON THE PERSON CLAIMING THE EXEMPTION OR EXCEPTION.

16
17 Section 15. Section 30-14-142, MCA, is amended to read:

18 "30-14-142. Penalties. (1) A person who violates the terms of an injunction or temporary
19 restraining order issued under 30-14-111 shall forfeit and pay to the state a civil ~~penalty~~ fine of not more
20 than \$10,000 ~~per~~ for each violation. For the purposes of this section, the district court issuing an
21 injunction or temporary restraining order retains jurisdiction and the cause ~~shall~~ must be continued, and
22 in ~~such~~ those cases the department acting in the name of the state may petition for recovery of civil
23 penalties.

24 (2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has
25 willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition
26 to the court, may recover on behalf of the state a civil ~~penalty~~ fine of not more than ~~\$500~~ per \$1,000
27 for each violation.

28 (3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall
29 upon conviction be fined not more than ~~\$2,000~~ \$5,000, imprisoned for not more than 1 year, or both,
30 in the discretion of the court. Nothing in this subsection limits any other provision of this part.

1 (4) For purposes of this section, a willful violation occurs when the party committing the violation
2 knew or should have known that ~~his~~ the conduct was a violation of 30-14-103."

3
4 NEW SECTION. Section 16. Codification instruction. [Sections 1 through ~~43~~ 14] are intended to
5 be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply
6 to [sections 1 through ~~43~~ 14].

7
8 NEW SECTION. Section 17. Effective dates. (1) [Sections 2(3) and ~~45~~ 16 and this section] are
9 effective on passage and approval.

10 (2) [Sections 1, 2(1) and (2), and 3 through ~~44~~ 15] are effective October 1, 1999.

11 - END -

RE-REFERRED AND APPROVED
BY COMMITTEE ON APPROPRIATIONS

SENATE BILL NO. 27

INTRODUCED BY J. HERTEL, C. AHNER, J. ANDERSEN, S. ANDERSON, B. BARNHART, S. BARTLETT,
J. BOHLINGER, S. BOOKOUT-REINICKE, M. BRAINARD, R. BROWN, C. CHRISTIAENS, E. CLARK,
P. CLARK, B. CRIPPEN, T. DELL, S. DOHERTY, D. ECK, J. ELLINGSON, A. ELLIS, D. EWER,
S. GALLUS, K. GILLAN, G. GOLIE, M. GUGGENHEIM, G. GUTSCHE, T. HAGENER, D. HARGROVE,
J. HARP, H. HARPER, D. HARRINGTON, D. HEDGES, C. HIBBARD, J. HURDLE, C. JUNEAU,
T. KEATING, S. KITZENBERG, B. LAWSON, R. LENHART, M. LINDEEN, J. LYNCH, D. MAHLUM,
G. MASOLO, B. MCCARTHY, L. MCCULLOCH, W. MCNUTT, R. MENAHAN, J. MERCER, D. MOOD,
K. OHS, B. PAVLOVICH, R. PECK, J. QUILICI, B. RANEY, B. REHBEIN, T. SCHMIDT, D. SHEA,
B. SIMON, F. SMITH, C. SQUIRES, E. SWANSON, B. TASH, J. TROPILA, M. WATERMAN,
C. WILLIAMS, C. YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA TELEMARKETING
REGISTRATION AND FRAUD PREVENTION ACT; REQUIRING TELEMARKETERS TO REGISTER WITH THE
STATE, POST A BOND, AND PROVIDE CERTAIN INFORMATION TO CONSUMERS; ESTABLISHING A
TELEMARKETING FRAUD CONSUMER AWARENESS PROGRAM; PROVIDING CIVIL AND CRIMINAL
PENALTIES FOR TELEMARKETING FRAUD; INCREASING THE CIVIL FINES FOR UNLAWFUL, UNFAIR, OR
DECEPTIVE ACTS OR PRACTICES; AMENDING SECTION 30-14-142, MCA; AND PROVIDING EFFECTIVE
DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through ~~43~~ 14] may be cited as the "Montana
Telemarketing Registration and Fraud Prevention Act".

NEW SECTION. Section 2. Purpose -- scope -- rulemaking. (1) The purposes of [sections 1
through ~~43~~ 14] are to require telemarketers to register in this state, to establish standards of conduct for
telemarketers, and to provide penalties for violations of [sections 1 through ~~43~~ 14].

(2) [Sections 1 through ~~43~~ 14] do not apply to any claim brought by a person under Title 30,
chapter 14, part 5, and the provisions of Title 30, chapter 14, part 5, do not apply to any claim brought

by a person pursuant to the provisions of [sections 1 through ~~13~~ 14].

(3) ~~(a)~~ The department shall adopt rules to implement the provisions of [sections 1 through ~~13~~ 14]. The rules must include but are not limited to rules:

~~(i)~~ (A) establishing forms and procedures for registration, registration renewal, and bonding of sellers or telemarketers;

~~(ii)~~ (B) for administering a telemarketing fraud consumer awareness program; and

~~(iii)~~ (C) ensuring that proper procedures are in place for maintaining civil and criminal actions for violations of [sections 1 through ~~13~~ 14].

~~(b) The office of the attorney general shall adopt rules to implement the provisions of [sections 1 through 13]. The rules must include but are not limited to rules:~~

~~(i) for administering a telemarketing fraud consumer awareness program; and~~

~~(ii) ensuring that proper procedures are in place for maintaining civil and criminal actions for violations of [sections 1 through 13].~~

NEW SECTION. Section 3. Definitions. As used in [sections 1 through ~~13~~ 14], the following definitions apply:

(1) "Consumer" means a person who is or may be required to pay for goods or services offered by a seller or telemarketer through telemarketing.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Goods or services" means any real property, any tangible or intangible personal property, or services of any kind provided or offered to a person.

(4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods or services. The term includes currency values and comparative expressions of value, including but not limited to percentages or multiples.

(5) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

(6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by chance.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won, has been selected to receive, or is eligible to

1 receive a prize or purported prize.

2 (8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers
3 to provide, or arranges for others to provide goods or services to the consumer in exchange for
4 consideration.

5 (9) "Solicitation" means a written or oral notification or advertisement that:

6 (a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video,
7 cinematic, telephonic, or electronic means to a consumer; and

8 (b) in the case of a notification or advertisement other than by telephone, either of the following
9 conditions is met:

10 (i) the notification or advertisement is followed by a telephone call from a seller or telemarketer;

11 or

12 (ii) the notification or advertisement induces a response by telephone and, through that response,
13 a seller or telemarketer attempts to make a sale of goods or services.

14 (10) "Supervised financial organization" means any ~~commercial~~ bank, trust company, savings and
15 loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender,
16 commercial finance lender, or insurer, provided that the organization is subject to supervision by an
17 agency of this or any other state of the United States OR AN AGENCY, BUREAU, OR DEPARTMENT OF
18 GOVERNMENT OF THE UNITED STATES.

19 (11) "Telemarketer" means a person, located within or outside of this state, who in connection
20 with telemarketing initiates or receives telephone calls to or from a consumer in this state. The term
21 includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in
22 telemarketing at the direction of a seller.

23 (12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to
24 induce the purchase of goods or services and that involves more than one telephone call to a consumer.

25
26 NEW SECTION. Section 4. Registration of sellers or telemarketers ~~—felony violations.~~ (1) (a)
27 Unless exempt under [section 5], a person may not act as a seller or telemarketer without first having
28 registered with the department.

29 (b) The initial application for registration must be approved by the department prior to a seller or
30 telemarketer offering or offering for sale consumer goods or services through any medium.

1 (c) A registered seller or telemarketer shall submit an application for renewal of registration
2 annually to the department.

3 (d) The application for a certificate of registration or renewal must include but is not limited to the
4 following information:

5 (i) the true name, current address, telephone number, and location of the seller or telemarketer,
6 including each name under which the seller or telemarketer intends to engage in telemarketing;

7 (ii) each occupation or business that the seller's or telemarketer's principal owner has engaged
8 in for the 2 years immediately preceding the date of the application;

9 (iii) whether any principal or manager has been convicted or pleaded guilty to or is being
10 prosecuted by indictment for racketeering, violations of state or federal securities laws, or a theft offense;

11 (iv) whether there has been entered against any principal or manager an injunction, a temporary
12 restraining order, or a final judgment in any civil or administrative action involving fraud, theft,
13 racketeering, embezzlement, fraudulent conversion, misappropriation of property, or violation of any
14 federal or state consumer protection law. The information must include any pending litigation against the
15 applicant.

16 (v) whether the seller, at any time during the previous 7 years, has filed for bankruptcy, been
17 adjudged bankrupt, or been reorganized because of insolvency;

18 (vi) the true name, current home address, date of birth, social security number, and all other
19 names of the following:

20 (A) each telemarketer or other person to be employed by the seller;

21 (B) each person participating in or responsible for the management of the seller's business; and

22 (C) each person, office manager, or supervisor principally responsible for the management of the
23 seller's business;

24 (vii) the name, address, and account number of every institution where banking or any other
25 monetary transactions are conducted by the seller; and

26 (viii) a copy of all scripts, outlines, or presentation material that the seller will require a
27 telemarketer to use when soliciting, as well as all sales information to be provided by the seller to a
28 purchaser in connection with any solicitation.

29 (2) (a) The application for registration or renewal must be accompanied by a surety bond in the
30 amount of \$50,000. The bond must provide for the indemnification of TO THE STATE OF MONTANA FOR any

1 person suffering a loss as the result of violation of [sections 1 through ~~13~~ 14].

2 (b) The surety may for any cause cancel the bond upon giving a 60-day written notice by certified
3 mail to the applicant and to the department. Unless the bond is replaced by that of another surety before
4 the expiration of the 60-day notice of cancellation, the registration of the seller or telemarketer must be
5 treated as lapsed.

6 (c) The surety bond must remain in effect for ~~3-years~~ 1 YEAR from the period the telemarketing
7 business ceases to operate in this state.

8 (d) (i) Any business required under [sections 1 through ~~13~~ 14] to file a bond with a registration
9 application may file, in lieu of the bond, a certificate of deposit, cash, or a government bond in the
10 amount of \$50,000.

11 (ii) The department shall hold the cash, certificate of deposit, or government bond for ~~3-years~~ 1
12 YEAR from the period the telemarketing business ceases to operate in this state or registration lapses in
13 order to pay claims made against the telemarketing business for its activities during its period of operation
14 in this state.

15 (iii) For the purposes of this section, "government bond" means any United States bond, treasury
16 note, or other public debt obligation of the United States that is unconditionally guaranteed as to both
17 interest and principal by the United States.

18 (e) The registration of a telemarketing business must be treated as lapsed if at any time the
19 amount of the bond, cash, certificate of deposit, or government bond falls below the amount required by
20 this section.

21 (f) The aggregate liability of the surety company to THE STATE OF MONTANA FOR all persons injured
22 by a seller's or telemarketer's violations may not exceed the amount of the bond.

23 (3) The following constitute a violation of [sections 1 through ~~13~~ 14]:

24 (a) failure to register, maintain, or renew a registration if required;

25 (b) failure to meet the surety bond requirement if required to provide a bond;

26 (c) including any false or misleading information on a registration application; and

27 (d) misrepresenting that a seller or telemarketer is registered.

28 (4) A violation of ~~[section 8, 10, 11, or 12]~~ or subsection (3) of this section also constitutes a
29 violation of 30-14-103 and is subject to the penalty provisions of [SECTION 14] AND the Montana Unfair
30 Trade Practices and Consumer Protection Act of 1973.

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NEW SECTION. Section 5. Exemptions from registration and bonding. The registration and

bonding requirements of [section 4] do not apply to:

(1) any securities, commodities, or investment brokers, dealers, or investment advisers or any associates of securities, commodities, or investment brokers, dealers, or investment advisers who are subject to licensure or registration by the securities and exchange commission, the national association of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an agency of this state or any other state and who are soliciting within the scope of their license or registration;

(2) a person engaged in solicitation for a religious, charitable, political, educational, or other noncommercial purpose or a person soliciting for a domestic or foreign nonprofit corporation that is registered with the Montana secretary of state;

(3) a business-to-business sale;

(4) a person that solicits sales by periodically publishing and delivering a catalog of the person's merchandise to prospective purchasers, if the catalog:

(a) contains a written description or illustration of each item offered for sale;

(b) includes the business or home address of the person soliciting the sale;

(c) includes at least 20 pages of written material and illustrations;

(d) is distributed in more than one state; and

(e) has a circulation by mailing of not less than 150,000;

(5) a person who solicits contracts for maintenance or repair of goods previously purchased from that person or from the person on whose behalf the solicitation is made;

(6) a person soliciting a transaction regulated by the commodity futures trading commission if the person is registered or temporarily licensed with the commodity futures trading commission under the Commodity Exchange Act, Title 7, chapter 1, of the United States Code, and the person's registration or license is not expired, suspended, or revoked;

(7) a supervised financial organization or parent, subsidiary, or affiliate of a supervised financial organization;

(8) AN INSURER AUTHORIZED TO TRANSACT INSURANCE UNDER TITLE 33, CHAPTER 2, PART 1, a person licensed as an insurance producer under Title 33, chapter 17, part 2, OR STAFF MEMBERS, LICENSED OR

1 UNLICENSED, OF THE PRODUCER;

2 (9) a person soliciting the sale of services provided by a satellite or cable television system OR A
3 RADIO OR TELEVISION STATION authorized by the federal government or this state to provide services in this
4 state;

5 (10) a telephone company or its subsidiary or agent or other business regulated by the Montana
6 public service commission, THE FEDERAL COMMUNICATIONS COMMISSION, A RURAL TELEPHONE COOPERATIVE OR
7 ITS SUBSIDIARY OR AGENT, or a federally licensed cellular telephone or radio telecommunication service
8 provider;

9 (11) a person soliciting business from consumers that have an existing business relationship with
10 or have previously purchased from the business enterprise for which the person is soliciting;

11 (12) a person operating a retail business establishment under the same name as that used in the
12 solicitation and:

13 (a) the products or services are displayed and offered for sale at the business establishment; and

14 (b) a majority of the person's business involves the consumer obtaining the products or services
15 at the business establishment;

16 (13) a person soliciting for the sale of a magazine or newspaper of general circulation;

17 (14) an issuer or a subsidiary of an issuer that is authorized to offer securities for sale in this state;

18 (15) a book, video, record, or multimedia club, contractual plan, or arrangement:

19 (a) under which the seller provides the consumer with a form that the consumer may use to
20 instruct the seller not to ship the offered merchandise;

21 (b) that is regulated by the federal trade commission regulation, 16 CFR 425, concerning the use
22 of negative option plans by sellers in commerce; or

23 (c) that provides for the sale of books, videos, records, multimedia products, or other goods that
24 are not covered by subsection (15)(a) or (15)(b), including continuity plans, subscription arrangements,
25 standing order arrangements, single sales, supplements, or series arrangements under which the seller
26 periodically ships merchandise to a consumer who has consented in advance to receive the merchandise
27 on a periodic basis;

28 (16) a real estate salesperson or broker licensed by this state;

29 (17) a person that has provided telemarketing sales services under the same name and derives
30 50% of gross telemarketing sales revenue from contracts with persons exempted under this section from

1 registration requirements;

2 (18) a person soliciting the sale of food or food products if the solicitation is not intended to and
3 does not result in a sale in excess of \$100 to a single address.

4
5 **NEW SECTION.** Section 6. Telemarketing fraud consumer awareness program. The department
6 shall establish and administer a telemarketing fraud consumer awareness program. The program must
7 be funded as provided in [section 7(2)].

8
9 **NEW SECTION.** Section 7. Authority of department, attorney general, and county attorney. (1)
10 The department, the attorney general, and a county attorney have the same authority in enforcing and
11 carrying out the provisions of [sections 1 through ~~43~~ 14] as they have under Title 30, chapter 14, part
12 1.

13 (2) All civil fines, costs, and fees received or recovered by the department pursuant to this section
14 must be deposited into the state special revenue account to the credit of the department and must be
15 used to defray the expenses of the department in discharging its administrative and regulatory powers
16 and duties in relation to this section and to fund the telemarketing fraud consumer awareness program
17 established in [section 5]. Any excess civil fines, costs, or fees must be deposited in the general fund.

18 (3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this
19 section must be deposited into the state special revenue account to the credit of the attorney general and
20 must be used to defray the expenses of the office of the attorney general in discharging its duties in
21 relation to this section and to establish a telemarketing fraud consumer awareness program similar to the
22 program authorized in [section 5]. Any excess civil fines, costs, or fees must be deposited in the general
23 fund.

24 (4) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the
25 general fund of the county where the action was commenced.

26
27 **NEW SECTION.** Section 8. Recordkeeping requirements. (1) (a) A telemarketer shall keep records
28 subject to this section for a period of 24 months from the date the record is produced.

29 (b) The records that must be kept for the 24-month period include:

30 (i) all substantially different advertising, brochures, telemarketing scripts, and promotional

1 materials;

2 (ii) the name and last-known address of each prize recipient and the prize awarded;

3 (iii) the name and last-known address of each consumer, the goods or services purchased, the
4 date the goods or services were shipped or provided, the amount of goods or services provided, and the
5 amount paid by the consumer for the goods or services;

6 (iv) the name, any fictitious name used, the last-known home address and telephone number, and
7 the job title for all current and former employees directly involved in telephone sales; however, if the seller
8 or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable
9 to only one specific employee; and

10 (v) all written authorizations required to be provided or received under [sections 1 through ~~13~~ 14].

11 (2) In the event of any dissolution or termination of a telemarketer's business, the principal of that
12 telemarketer shall maintain all records as required under this section. In the event of any sale, assignment,
13 or other change in ownership of the seller's business, the successor shall maintain all records required
14 under this section.

15
16 NEW SECTION. Section 9. Acts and practices not governed by [sections 1 through ~~13~~ 14]. The
17 following acts and practices are not subject to the provisions of [sections 1 through ~~13~~ 14]:

18 (1) telephone calls in which the sale of goods or services is not completed and payment or
19 authorization of payment is not required until after a face-to-face sales presentation by the seller or
20 telemarketer; and

21 (2) telephone calls initiated by a consumer that are not the result of any solicitation by a seller
22 or telemarketer.

23
24 NEW SECTION. Section 10. Disclosure and contract requirements. (1) When contacting a
25 consumer, a seller or telemarketer shall promptly disclose in a clear and conspicuous manner the
26 following:

27 (a) the identity of the seller or telemarketer;

28 (b) that the purpose of the call is to sell goods or services;

29 (c) the nature of the goods or services; and

30 (d) that a purchase or payment is not necessary to be able to win a prize or participate in a prize

1 promotion.

2 (2) Prior to requesting any payment from the consumer a seller or telemarketer shall disclose in
3 a clear and conspicuous manner the following information:

4 (a) the total cost of the goods or services;

5 (b) all material restrictions, limitations, and conditions pertaining to the purchase of the goods or
6 services;

7 (c) in any prize promotion:

8 (i) the odds of being able to receive the prize or, if the odds are not calculable in advance, the
9 factors used in calculating the odds; and

10 (ii) the "no-purchase no-payment" method of participating in the prize promotion with either
11 instructions on how to participate or an address or a local or toll-free telephone number that consumers
12 may write or call for information on how to participate.

13 (3) A seller or telemarketer may not misrepresent, directly or by implication, any of the following
14 information:

15 (a) any material aspect of performance, effectiveness, nature, or basic characteristics of goods
16 or services;

17 (b) any material aspect of the nature or terms of the seller's or telemarketer's refund,
18 cancellation, exchange, or repurchase policies; or

19 (c) any material aspect of a prize promotion, including but not limited to the nature or value of
20 the prize or that a purchase or payment is required to win a prize or to participate in a prize promotion.

21 (4) (a) Except as provided in subsection (6), in addition to any other right to revoke an offer, in
22 the case of a sale made by telephone, the buyer may cancel the sale at any time prior to signing an
23 agreement or offer to purchase the goods or services.

24 (b) Cancellation occurs:

25 (i) when written notice of cancellation is given to the seller or telemarketer; or

26 (ii) when written notice of cancellation, properly addressed and with postage prepaid, is deposited
27 in the mail.

28 (c) A notice of cancellation does not have to be in the form prescribed by the seller or
29 telemarketer if it indicates the intention of the buyer to cancel the sale of goods or services.

30 (d) In the case of goods, a telemarketing sale may not be canceled if the goods cannot be

1 returned to the seller or telemarketer in substantially the same condition as when received by the buyer.

2 (5) (a) Except as provided in subsection (6), a telemarketing sale may not be considered final until
3 the purchaser receives the notice required by subsection (5)(b).

4 (b) A seller or telemarketer shall furnish the purchaser, in the same language as that principally
5 used in the sales presentation, a written notice, in not less than 10-point boldface type, containing a
6 statement in substantially the following form:

7 "You, the purchaser, may cancel this transaction without any penalty or obligation at any time
8 prior to midnight of the third business day after receipt of this notice. If you cancel, any payments made
9 by you under the sale will be returned within 10 business days of the day your written notice of
10 cancellation is received by the seller and any security interest connected to this transaction will be
11 canceled.

12 If you cancel, you must make available to the seller at your residence, in substantially as good
13 condition as when received, any goods delivered to you under this sales contract; or you may, if you wish,
14 comply with the seller's instructions regarding returning the goods at the seller's expense and risk.

15 If you do make the goods available to the seller and the seller does not pick up the goods within
16 20 days of the date of your notice of cancellation or if the seller does not agree to assume the expense
17 and risk of the return of the goods to the seller, you may retain or dispose of the goods without any
18 further obligation. If you fail to make the goods available to the seller or if you agree to return the goods
19 to the seller and fail to return the goods, then you remain liable for the performance of all your obligations
20 under the sales contract.

21 To cancel this transaction, mail, deliver, or telegram a written notice of cancellation to (name of
22 seller) at the following address (address of the seller)."

23 (c) In addition to the notice required in subsection (5)(b), the seller or telemarketer shall furnish
24 the purchaser with:

25 (i) the seller's or telemarketer's name and the name of the person to whom a notice of
26 cancellation is to be given if different from the seller's or telemarketer's name;

27 (ii) the legal name of the company for whom the seller or telemarketer is soliciting;

28 (iii) the seller's or telemarketer's street address and telephone number; and

29 (iv) the date and a description of the telephone solicitation.

30 (6) A sale is not subject to the requirements of subsections (4) and (5) if the seller or

1 telemarketer, at a minimum, has a policy of:

2 (a) accepting returns or canceling services in connection with the return of unused and
3 undamaged goods or canceled services for a period of not less than 7 days after the date of delivery to
4 the consumer and providing a cash refund for a cash purchase or issuing a credit for a credit purchase
5 applied to the account that was debited;

6 (b) disclosing the seller's or telemarketer's refund and return policy to the consumer by telephone
7 or in written material included with advertising or promotional material or with the delivery of the goods
8 or services; and

9 (c) restoring payments or issuing credits pursuant to subsection (6)(a) within 30 days after the
10 date on which the seller or telemarketer receives the returned goods or notice of cancellation of services.
11 A seller or telemarketer who discloses in writing that a sale is subject to "satisfaction guaranteed", "free
12 inspection", "a no-risk guarantee", or similar words or phrases must be considered to have met the review
13 and return for refund policy requirements of this subsection.

14 (7) It is an unfair and deceptive act or practice to fail to comply with or to misrepresent the
15 requirements of this section.

16 (8) In addition to subsection (7), it is a violation of [sections 1 through ~~13~~ 14] for any seller or
17 telemarketer to engage in any other unfair or deceptive conduct that would create a likelihood of
18 confusion or misunderstanding to any reasonable consumer.

19 (9) Failure to comply with the provisions of this section is a violation of 30-14-103 AND IS SUBJECT
20 TO THE PENALTY PROVISIONS OF [SECTION 14] AND THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER
21 PROTECTION ACT OF 1973.

22
23 **NEW SECTION.** Section 11. Prohibited acts and practices. (1) It is a violation of [sections 1
24 through ~~13~~ 14] for a seller or telemarketer, PURPOSELY OR KNOWINGLY, to engage in the following conduct:

25 (a) advertise or represent that registration as a seller or telemarketer equals an endorsement or
26 approval by the state or any political subdivision of the state;

27 (b) assist, support, or provide substantial assistance to any telemarketer when the seller knew
28 or should have known that the telemarketer was engaged in any act or practice violating [section 8] or
29 this section;

30 (c) request a fee in advance to remove derogatory information from or improve a person's credit

1 history or credit record;

2 (d) request or receive payment in advance from a person to recover or otherwise aid in the return
3 of money or any other item lost by the person in a prior telemarketing transaction; however, this
4 subsection does not apply to services rendered to a person by a licensed attorney;

5 (e) obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a
6 person's checking, savings, bond, or other account without the person's express written authorization;
7 or

8 (f) procure the services of any professional delivery, courier, or other pickup service to obtain
9 immediate receipt or possession of a person's payment unless the goods are delivered with the
10 opportunity to inspect them before any payment is collected.

11 (2) Failure to comply with the provisions of subsection (1) constitutes a violation of 30-14-103
12 AND IS SUBJECT TO THE PENALTY PROVISIONS OF [SECTION 14] AND THE MONTANA UNFAIR TRADE PRACTICES AND
13 CONSUMER PROTECTION ACT OF 1973.
14

15 NEW SECTION. Section 12. Abusive acts and practices ~~—burden of proof.~~ (1) It is an abusive
16 telemarketing act or practice and a violation of [sections 1 through ~~43~~ 14] for any seller or telemarketer
17 to engage in the following conduct:

18 (a) use threatening, intimidating, or profane or obscene language;

19 (b) engage any person repeatedly or continuously with behavior a reasonable person would
20 consider annoying, abusive, or harassing;

21 (c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR
22 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or
23 telemarketer;

24 (d) engage in telemarketing to a person's residence at any time other than between 8 a.m. and
25 9 p.m. local time at the called person's location; or

26 (e) engage in any other conduct that would be considered abusive to any reasonable consumer.

27 (2) The department or the attorney general may seek injunctive or declaratory relief or any other
28 remedy provided in Title 30, chapter 14, part 1, for any violations of this section.

29 ~~—(3) In any criminal proceeding alleging a violation of [sections 1 through 13], the burden of~~
30 ~~producing evidence to support a defense based on an exemption under [section 5] or an exception from~~

1 ~~a definition in [section 3] is on the person claiming the exemption or exception.~~

2
3 **NEW SECTION. Section 13. Civil remedies -- venue -- burden of proof.** (1) The sale of any goods
4 or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining
5 a judgment for damages, attorney fees, or costs against a seller or telemarketer pursuant to this section
6 has the right to be reimbursed for those damages, attorney fees, or costs from any bond or security
7 posted by the seller or telemarketer pursuant to the provisions of [section 4].

8 (2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or
9 a prohibited act or practice is entitled to recover actual damages or \$500, whichever is greater, attorney
10 fees, court costs, and any other remedies provided by law.

11 (3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result
12 of an abusive act or practice is entitled to receive injunctive or declaratory relief.

13 (4) (a) The department, the attorney general, or a county attorney, on behalf of state residents
14 who have suffered a loss or harm as a result of a violation of [sections 1 through ~~13~~ 14], may seek any
15 remedy provided by Title 30, chapter 14, part 1.

16 (b) The proper place for trial for an action based on a claim of a violation of [sections 1 through
17 ~~13~~ 14] is the district court of Lewis and Clark County or the county in which the alleged violation
18 occurred.

19 (5) In a civil proceeding alleging a violation of [sections 1 through ~~13~~ 14], the burden of proving
20 an exemption under [section 5] or an exception to a definition contained in [section 3] is on the person
21 claiming the exemption or exception.

22
23 **NEW SECTION. SECTION 14. PENALTIES -- MISDEMEANOR AND FELONY VIOLATIONS -- BURDEN OF PROOF.**
24 **(1) (A) A PERSON WHO FAILS TO FOLLOW THE REQUIREMENTS OF [SECTIONS 4, 8, 10, 11, OR 12] COMMITS THE**
25 **OFFENSE OF FAILURE TO COMPLY WITH THE REQUIREMENTS OF [SECTIONS 1 THROUGH 14]. EXCEPT AS OTHERWISE**
26 **PROVIDED IN [SECTION 11], THIS OFFENSE IS SPECIFICALLY INTENDED TO BE AN ABSOLUTE LIABILITY OFFENSE AS**
27 **PROVIDED FOR IN 45-2-104.**

28 **(B) A PERSON CONVICTED OF THE OFFENSE OF FAILURE TO COMPLY WITH THE REQUIREMENTS OF [SECTIONS**
29 **1 THROUGH 14] SHALL BE FINED NOT TO EXCEED \$500 OR BE IMPRISONED IN THE COUNTY JAIL FOR A TERM NOT TO**
30 **EXCEED 6 MONTHS, OR BOTH.**

1 (C) UPON A SECOND OR SUBSEQUENT CONVICTION FOR THE OFFENSE OF FAILURE TO COMPLY WITH THE
2 REQUIREMENTS OF [SECTIONS 1 THROUGH 14], A PERSON SHALL BE FINED NOT TO EXCEED \$50,000 OR BE IMPRISONED
3 IN THE STATE PRISON FOR A TERM NOT TO EXCEED 5 YEARS, OR BOTH.

4 (2) (A) A PERSON COMMITS THE OFFENSE OF TELEMARKETING FRAUD WHEN THE PERSON KNOWINGLY VIOLATES
5 [SECTIONS 1 THROUGH 14] WITH THE PURPOSE OF DEPRIVING AN OWNER OF PROPERTY.

6 (B) A PERSON CONVICTED OF THE OFFENSE OF TELEMARKETING FRAUD IN WHICH THE VALUE OF THE PROPERTY
7 DOES NOT EXCEED \$500 SHALL BE FINED NOT TO EXCEED \$500 OR BE IMPRISONED IN THE COUNTY JAIL FOR A TERM
8 NOT TO EXCEED 6 MONTHS, OR BOTH.

9 (C) A PERSON CONVICTED OF THE OFFENSE OF TELEMARKETING FRAUD IN WHICH THE VALUE OF THE PROPERTY
10 EXCEEDS \$500 OR THE PERSON HAS ENGAGED IN TELEMARKETING FRAUD AS PART OF A COMMON SCHEME SHALL BE
11 FINED NOT TO EXCEED \$50,000 OR BE IMPRISONED IN THE STATE PRISON FOR A TERM NOT TO EXCEED 10 YEARS, OR
12 BOTH.

13 (3) IN ANY CRIMINAL PROCEEDING ALLEGING A VIOLATION OF [SECTIONS 1 THROUGH 14], THE BURDEN OF
14 PRODUCING EVIDENCE TO SUPPORT A DEFENSE BASED ON AN EXEMPTION UNDER [SECTION 5] OR AN EXCEPTION FROM
15 A DEFINITION IN [SECTION 3] IS ON THE PERSON CLAIMING THE EXEMPTION OR EXCEPTION.

16
17 Section 15. Section 30-14-142, MCA, is amended to read:

18 "30-14-142. Penalties. (1) A person who violates the terms of an injunction or temporary
19 restraining order issued under 30-14-111 shall forfeit and pay to the state a civil ~~penalty~~ fine of not more
20 than \$10,000 ~~per~~ for each violation. For the purposes of this section, the district court issuing an
21 injunction or temporary restraining order retains jurisdiction and the cause ~~shall~~ must be continued, and
22 in ~~such~~ those cases the department acting in the name of the state may petition for recovery of civil
23 penalties.

24 (2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has
25 willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition
26 to the court, may recover on behalf of the state a civil ~~penalty~~ fine of not more than ~~\$500~~ per \$1,000
27 for each violation.

28 (3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall
29 upon conviction be fined not more than ~~\$2,000~~ \$5,000, imprisoned for not more than 1 year, or both,
30 in the discretion of the court. Nothing in this subsection limits any other provision of this part.

1 (4) For purposes of this section, a willful violation occurs when the party committing the violation
2 knew or should have known that ~~his~~ the conduct was a violation of 30-14-103."

3
4 NEW SECTION. Section 16. Codification instruction. [Sections 1 through ~~13~~ 14] are intended to
5 be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply
6 to [sections 1 through ~~13~~ 14].

7
8 NEW SECTION. Section 17. Effective dates. (1) [Sections 2(3) and ~~15~~ 16 and this section] are
9 effective on passage and approval.

10 (2) [Sections 1, 2(1) and (2), and 3 through ~~14~~ 15] are effective October 1, 1999.

11 - END -